

M E S S A G E

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

DOCUMENTS

RELATIVE

TO THE EXECUTION OF THE FIRST ARTICLE
OF THE LATE TREATY

BETWEEN

The United States and Great Britain.

February 7, 1817.

Ordered to be printed for the use of the Senate.

WASHINGTON:

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To the Senate of the United States.

I transmit to the Senate a report of the Secretary of State, complying with their resolution of the 28th of last month.

JAMES MADISON.

February 7th, 1817.



Department of State,

February 5th, 1817.

The Secretary of State, to whom has been referred the resolution of the Senate of the 28th of last month, requesting the President to cause to be laid before the Senate such information as he may possess, touching the execution of so much of the first article of the late treaty of peace and amity between his Britannic majesty and the United States of America, as relates to the restitution of slaves, has the honour to submit to the President the accompanying papers, marked A, B, C, D, and E, as containing all the information in this Department supposed to be called for by the said resolution.

All which is respectfully submitted,

JAS. MONROE.



(A.)

*Extract of a letter from the Secretary of State to
Mr. Adams, dated May 11, 1815.*

“I am sorry to have to state that the British naval commanders have construed the stipulation in the treaty not to carry off with their forces the slaves whom they had taken from our citizens, differently from this government. My correspondence with Mr. Baker, of which a copy is enclosed, will show the ground of this difference, which appears to be so decidedly in favour of the United States, that it has excited surprise that it should have existed, and still greater that the British officers should have acted on their construction, by removing the slaves in question. Mr. Baker makes a distinction between the slaves who were in British ships of war in our waters, and those who were in the posts held by their forces at the time of the exchange of the ratifications of the treaty, but I think without reason. It seems to have been the intention of the parties, and to be the clear import of the article, that they should carry off no slaves that were then within our limits. They were as much in the possession and under the authority of the British commanders, in the forts or other places held by their troops on the land as in their vessels. It was as much a carrying away in the one instance as in the other; and the injury to the proprietors of the slaves was the same. In short, I see no ground for such a distinction. The United States have a right either to the restitution of all these slaves, or to compensation for their loss. I shall forward to you, without delay, a list of those, thus removed, with an

estimate of their value, the payment of which, if the slaves themselves are not restored, you will claim of the British government."

(Copy.)

The Secretary of State to Mr. Baker, charge d'affaires of his Britannic majesty, dated, April 1, 1815.

SIR,

I regret to have to state, that the commanders of his Britannic majesty's naval forces in the Chesapeake and on Cumberland-Island, and other islands off the southern coast, have construed the stipulation in the first article of the treaty of peace, lately concluded between the United States and Great Britain, very differently from what is thought to be a just construction of it by this government. They comprise slaves, and other private property, under the same regulation with artillery, and other public property, and contend that none ought to be restored, except such as were, at the time of the exchange of the ratifications of the treaty, in the forts and places where they were originally taken.

By the first article of the treaty it is stipulated, "that all territory, places, and possessions whatsoever, taken from either party by the other, during the war, or which may be taken after the signing of this treaty, excepting only the islands herein after mentioned, shall be restored without delay, and without causing any destruction or carrying away any of the artillery or other public property originally captured in the said forts or places, and which

shall remain therein, upon the exchange of the ratifications of this treaty, or any slaves or other private property."

A very obvious distinction exists between private and public property, and there may be a strong and obvious motive for destroying the one, when there can be none for destroying the other. It frequently happens, in surrendering territory by a treaty of peace, that the party withdrawing stipulates a right to destroy the fortifications in its possession, and to carry away or destroy the artillery and munitions of war in them, but, it is believed, that no example can be found of a stipulation to authorize the destruction of private property of any kind, especially slaves. Equally strange would a stipulation be not to destroy them.

The terms of the article preserve this distinction between public and private property in a guarded manner. All territory, places, and possessions, with a particular exception, shall be restored without destroying or carrying away any of the artillery or other public property, originally captured in the said forts or places, and which remain there upon the exchange of ratifications. So far the stipulation acts upon proper subjects and conforms to usage. Extend it to slaves and other private property, and how inconsistent and unnatural the application! Had it been intended to put slaves and other private property on the same ground with artillery and other public property, the terms "originally captured in the said forts or places, and which shall remain therein on the exchange of the ratifications of this treaty," would have followed at the end of the sentence, after "slaves and other private property." In that case both interests, the public and the private, would have been subject to the same restraint.

But by separating them from each other, and putting the restrictive words immediately after "artillery and other public property," it shows that it was intended to confine their operation to those objects only, excluding from it "slaves and other private property."

Other consequences, equally inconsistent with the spirit and equity of the article, would follow, from the construction given of it by the British naval commanders. If the slaves, and other private property, are placed on the same footing with artillery, and other public property, the consequence must be that all will be carried away. It is believed that none of the slaves were taken in forts, or other places, where the British troops happened to be at the exchange of the ratifications of the treaty. By far the greater number, if not the whole, were taken from proprietors inhabiting the country bordering on the bays and rivers which empty into the Atlantic. As this fact was well known to the commissioners of both nations, it furnishes a conclusive argument against the construction contended for by the British naval commanders. It cannot be believed that the commissioners would have agreed to a stipulation which they respectively knew would produce no effect.

In supposing that all the slaves would be carried away under the construction given to this article by the British naval commanders, I have considered the term "place" in a qualified sense, synonymous with fort, as a military station taken by the British forces and held by them at the peace. But if it is construed in a more enlarged sense, such as the country from which the slaves were taken, none could be carried away, even under that construction. That it must be con-

strued in this enlarged sense, if applicable to slaves and other private proverty, is obvious, from the consideration that the act of taking them removed them from the places where they were taken.

The stipulation in this article, in relation to the point in question, by a fair and just construction, appears to me to amount to this, that each party shall restore, without delay, all the territory, places, and possessions, which had been taken by it, with the exception of certain islands:—that neither shall destroy or carry away artillery or public property, provided they be, at the time of the exchange of ratifications, in the forts or places in which they were originally captured: that neither shall carry away slaves or other private property. The restraint provided against the carrying away of the latter, is evidently connected with the great object of the article, the restoration of territory, places and possessions, and not with forts and places, in the qualified sense suggested; in which sense it applies to artillery and other public property only, the ordinary and proper appurtenances of forts and other military posts.

From every view which I have been able to take of this subject, I am of opinion that the United States are entitled to all the slaves and other private property, which were in the possession of the British forces, within the limits of the United States, on the exchange of the ratifications of the treaty, whether they were in forts or British ships of war.

Presuming that your government has instructed you upon this subject, and that it concurs in this construction of the article, I flatter myself that you will give directions to the British naval com-

manders not to carry away any of the slaves and other private property, which may thus be fairly claimed by the United States.

I have the honour to be, &c.
(Signed) JAMES MONROE.

Washington, April 3, 1815.

SIR,

I have had the honour to receive your letter of the 1st instant, stating that the commanders of his majesty's naval forces have given a different construction to that part of the first article of the treaty of peace lately concluded between the two countries, which relates to the restoration of slaves and private property, from what is thought by the American government to be its just construction, by making the restriction annexed to the restoration of artillery and public property likewise apply to slaves and private property; at the same time expressing your opinion that the United States are entitled to all the slaves and other private property in possession of the British forces, within the limits of the United States on the exchange of the ratifications, whether they were in forts or British ships of war, and requesting, under the supposition that his majesty's government concurred in this construction of the article, and had furnished me with instructions accordingly, that I would give directions to the naval commanders not to carry away any of the slaves so claimed by the United States.

As I have not received any communication on the subject from the commander-in-chief on the American station, by whose orders the several naval commanders have, no doubt, been guided, I

am unacquainted with the grounds on which he rests his interpretation of the words of the first article of the treaty. It is, however, not improbable that he may have imagined that it could not have been intended by the plenipotentiaries of the two countries that there should be a general prohibition against carrying away from the places restored all private property of every description, and to whomsoever belonging, found therein on the exchange of the ratifications, and that, therefore, as some limitation must have been contemplated in the case of private as well as public property, the restriction attached, by the words immediately preceding, to the latter, was likewise applicable to the former.

I regret to find that by the view taken of this part of the first article, the government of the United States claim the negroes, originally American, on board of the British ships of war which happened to be within the limits of the United States at the time of the exchange of the ratifications, as I do not conceive that it can be satisfactorily shown that this construction is sanctioned by the words of the article; and I have no hesitation in stating my belief, founded on the best means of information, that at the time the article was framed, it was meant that the prohibition against carrying away slaves and private property should be taken in connexion with the restoration of territory, places, and possessions; and that if it had been supposed by his majesty's plenipotentiaries, at Ghent, that the words were susceptible of the construction now given to them, and that a claim would be founded upon them for the delivering up of persons who had sought refuge during the war on board of British ships, their insertion

would have been decidedly objected to, and others proposed.

Not being, however, in possession of any instructions from my government upon this subject, the only steps which it is in my power to take in relation to it, is to transmit to England, and to the naval commander-in-chief on this station, copies of your letter, and I have no doubt that the reasoning contained in it will, in the most perfect spirit of amity, be duly and considerately examined, with the sincere desire to give that interpretation to the article in question which may be most consonant to justice and to its true and fair meaning.

I have the honour to be, with the greatest consideration and respect, sir, your most obedient humble servant,

(Signed) ANTHONY ST. JOHN BAKER.

To the Hon. James Monroe, &c. &c. &c.

(B.)

*City of Washington,
February 28th, 1815.*

SIR,

I now enclose a copy of the correspondence between the commissioners appointed on the part of the United States to receive and make the necessary arrangements respecting the public and private property in possession of the British forces within the Chesapeake Bay, to be given up under the first article of the treaty of peace between the United States and Great Britain, and captain John Clavelle, commanding the British forces in the Chesapeake Bay.

In pursuance of the arrangements therein made, colonel Bayly has remained to take an inventory of the property and slaves, and to endeavour to ascertain, as far as practicable, to whom they belong.

I have the honour to be, &c. &c.

(Signed)

GEORGE GRAHAM.

*The honourable**James Monroe.*

Schooner Adeline,
Chesapeake Bay,
23d February, 1815.

SIR,

The undersigned, commissioners appointed on the part of the United States to receive, and make all necessary arrangements concerning the property which may be in the possession of the forces of his Britannic majesty in the Chesapeake, or on

the shores or islands thereof, and which is to be delivered up and restored, agreeably to the first article of the treaty of peace and amity between the United States and his Britannic majesty, concluded and signed at Ghent, on the 24th day of December, 1814, have the honour to inform you that, having exhibited to you their powers, they are now ready to proceed to execute the trust reposed in them; and they take this occasion to observe, that under the stipulations of the first article of the said treaty, all slaves, and other private property, which may now be in possession of the forces of his Britannic majesty within the Chesapeake are claimed, to be delivered up forthwith, and that all such as may have been removed since the 17th instant, the day on which the exchange of the ratifications of the treaty took place, are claimed, to be restored with all convenient despatch.

We have the honour to be, &c. &c. &c.

(Signed)

THO. M. BAYLY,
GEORGE GRAHAM,
JOHN S. SKINNER.

*Captain John Clavelle,
commander of his Britannic
majesty's forces in the Chesapeake.*



His majesty's ship Orlando,

In the Patuxent,

February 23d, 1815.

Gentlemen,

I have just had the honour of receiving your communication of this day's date, stating that you are appointed, on the part of the United States, to receive and make all necessary arrangements con-

cerning the property which may be in possession of the forces of his Britannic majesty in the Chesapeake, or on the shores or islands thereof, agreeable to the first article of the treaty of peace between his Britannic majesty and the United States; and in reply I beg to state, that I understand the first article of the treaty, relative to private and public property, thus, viz: all territory, places, and possessions whatsoever, taken from either party by the other during the war, or which may have been taken after the signing this treaty, excepting only the islands hereafter mentioned, shall be restored without delay, and without causing any destruction or carrying away any of the artillery, or other public stores—or any *slaves*, or other private property *originally* captured in the said forts or places, and which shall remain *therein* upon the exchange of the ratification of this treaty.

As none of the slaves now in Tangier were captured there, I cannot feel myself at liberty to deliver them up—far less can I give up those now serving on board his Britannic majesty's ships, as by entering into the service they made themselves free men. I shall, however, give directions that the whole of those on board the different ships of every description, shall be discharged into this ship until I receive instructions from rear admiral Cockburn, to whom I shall immediately despatch a vessel.

I have the honour to be,

&c. &c. &c.

(Signed)

JOHN CLAVELLE

To Messrs. Bayly, Graham, and Skinner.

Schooner Adeline,

In the Chesapeake Bay,

23d February, 1815.

SIR,

We have the honour to acknowledge the receipt of your reply to our communication of this date, and regret to find that you do not feel yourself at liberty to deliver up all slaves and other private property of the citizens of the United States, which came under your control previously or subsequently to the date of the exchange of the ratifications of the treaty concluded by the commissioners on the part of the United States and Great Britain, and still remaining within the Chesapeake, or on the shores or islands thereof.

As, however, you have put a construction upon the first article of the treaty, which, in our estimation, the terms of it do not warrant, and difficulties have arisen in the execution of our trust which were not anticipated, it becomes our duty to ask your co-operation in taking, for the mutual satisfaction of our respective governments, an inventory of all slaves and other private property within the waters of the Chesapeake, or on the shores or islands thereof, and now in the possession of his Britannic majesty's forces; that the difference of construction, placed upon the first article of said treaty may be satisfactorily adjusted, and its stipulations executed in good faith. We are further satisfied you will perceive the propriety of furnishing us, for the information of the proper authorities, as far as the means in your power may render it practicable, with an account of all slaves and other private property of citizens of the United States, which may have been removed from the Chesapeake, or any of the shores or islands thereof, since the date of the ratification

of the treaty; and in like manner with an account of all artillery or other public property, if any, which was, on the date of the ratification of the said treaty, or which may still remain within the forts, or places where the same was originally captured.

We have the honoer to be, &c. &c. &c.

THO. M. BAYLY,
GEORGE GRAHAM,
JOHN S. SKINNER.

Capt. JOHN CLAVELLE,
Commander of his Britannic majesty's
forces in the Chesapeake.



His Britannic majesty's ship Orlando,

In the Patuxent, February 24th, 1815.

Gentlemen,

In reply to your communication of yesterday's date, which I had the honour of receiving last evening, I beg to state that I *do* conceive the terms of the first article of the treaty of peace between his Britannic Majesty and the United States *does* admit of the construction I put on it yesterday in my note to you, and not at all applicable to the slaves now on Tangier-Island, or those on board his Britannic majesty's ships under my command, now in the Chesapeake—they not having been captured "there." But in order that every thing may be perfectly understood, and properly arranged hereafter, I shall be most happy to meet your wishes for the mutual satisfaction of our respective governments, by ascertaining and taking an inventory of all slaves, and other private property of the citizens of the United States, within the waters of the Chesapeake, or on the shores or islands

thereof, and now in the possession of his Britannic majesty's forces

I further state, for your information, that no slaves, or other private property, has been removed from the Chesapeake or any of the shores or islands thereof, since the exchange of the ratification of the treaty; or has any artillery or other public property.

As soon as the weather is fine I shall proceed to Tangier for the purpose of assisting you in taking an inventory of the slaves, which I certainly cannot think of giving up, until I receive instructions on that head, *conceiving they do not come within the limits of the first article of the treaty.*

I have the honour to be, &c. &c.

(Signed)

JOHN CLAVELLE.

To the American commissioners, &c. &c. &c

Accomack, April 18th, 1815.

SIR,

Yesterday captain Clavelle, with the Orlando and Madagascar frigates, and schooner Bream, sailed from near Tangier harbour for Bermuda. I enclose to you copies of my last letter to him and his reply, upon the subject of the slaves and other property, public and private, which ought not to have been carried away.

I have the honour to be,

With great respect,

Your obedient servant,

(Signed)

TH. M. BAYLY.

*The honourable James Monroe,
Secretary of State.*

Accomack, April 13th, 1815.

SIR,

I am informed that you intend to-morrow to leave the Chesapeake Bay, with the ships under your command, and I wish to know your determination respecting the restoration of the slaves and other property, public and private, which was captured from the United States and citizens thereof, during the late war, and which were in the waters of the Chesapeake, and islands thereof, on the day the ratification of the treaty of peace and amity between the United States and Great Britain was exchanged.

You have informed me of your visit to Mr. Baker, charge d'affaires of his Britannic majesty at Washington, and that you have received from rear admiral Cockburn his instructions; I may, therefore, expect your final determination, and I hope that your construction upon the first article of this treaty of amity is such that the slaves and other property contemplated by it will not be carried away.

I have the honour to be, &c. &c. &c.

(Signed)

THO. M. BAYLY.

John Clavelle, esquire,

*commanding his Britannic majesty's
ships and vessels in the Chesapeake
Bay, &c.*

His Britannic majesty's ship Orlando,
in the Chesapeake,

April 15, 1815.

SIR,

In reply to your communication of the 13th instant, I beg to state that my determination is not

to restore any slaves, private or public property, captured before the exchange of the ratification of the treaty of peace between his Britannic majesty and the United States, agreeable to my instructions from rear admiral Cockburn on that head.

I have the honour to be, &c. &c. &c.

(Signed)

JOHN CLAVELLE.

To T. M. BAYLY, esq. &c. &c. &c.

(C.)

Copy of a letter from Thomas M. Newall, captain of sea-fencibles, and Thomas Spalding, to brigadier general Floyd, dated at Sapelo-Island, March the 16th, 1815.

SIR,

We left Darien on Sunday the 5th instant, and arrived at Dungeness at 4 o'clock on Monday. As we observed British troops embarking, and as we believed, many slaves and much private property would be sent off with them, we determined to call upon admiral Cockburn immediately, and to present the letters from general Pinkney and yourself, with our letter of authority. On reading general Pinkney's letter, and discovering that instead of a copy of the treaty of peace from the Secretary of State's office, the National Intelligencer was enclosed, Admiral Cockburn expressed much surprise, and it appeared from his manner that his temper was not a little ruffled by the incident. He totally denied the authority of a treaty so communicated to him. After reminding him that the Intelligencer was the state paper of the *United States* for such purposes; that in England the publication of a treaty in the gazette would be a proper promulgation of it; and the impossibility that there would be of furnishing to every detached squadron that floated upon the sea, any more authentic copy of a treaty of peace, than the public papers afforded.—These were the ideas brought forward, and this the language, with the exception of its being abridged. Admiral Cockburn still denied our positions, but then proposed

to us, that we should make a transcript of the treaty; that we should certify it to be a true copy, and should present it to him as such on the part of general Pinkney and yourself: as forms were no object, we assented to this at once—the difficulty having been gotten over, we thought it proper to enter immediately on the subject matter of our mission; and requested to know of admiral Cockburn what public property taken at Point Petre or at St. Mary's remained upon Cumberland Island, in the ships near Dungeness, or in the ships then lying in the Sound, of which there were many; some of these ships taken at St. Mary's and there loaded with property taken at the same place.

As we had no instructions as to the extent of the restitution we should demand, and were left to our own judgment on the occasion, we determined to adopt the same rule in regard to private property and to slaves, that we had adopted in regard to public property. We, therefore, demanded all the slaves and private property, of every description, taken or received at Cumberland Island, at St. Mary's, or St. Simon's, and which was then on Cumberland-Island, or lying in the waters contiguous to the same, on board his ships, or which had been there at the ratification of the treaty of peace by the President of the United States; and in making this demand we were happy to find that a very great portion of the public and private property, and almost all the slaves taken or received since the British forces had been operating in Georgia, came within the limits we had prescribed to our demand. To our inquiry as to public property, and our demand as to private, admiral Cockburn at once replied, "he had no public property—that the guns he

had removed—the munitions of war he had destroyed ;” but if they were there, not having been taken at Cumberland Island, which place alone remained in his possession at the ratification of the treaty, they did not come within the operation of the first article of it. That with regard to slaves, and other property, he meant to adopt the same rule: That “ the property and slaves taken at Cumberland, and remaining there at the ratification, would be restored; but what were taken or received from other places, although on Cumberland, or in the ships in the river or sound, would not.”

It will be understood that we do not here repeat the words, but the substance, of what admiral Cockburn said, who appeared during the whole of this conversation a little warm. Having discovered the construction which admiral Cockburn was pleased to put upon the treaty, and his manner forbidding a hope of a change of opinion, Mr. Spalding thought it proper to draw his attention to the ships, then lying within a hundred yards of the wharf of Dungeness, on board of which it was known some slaves were, by observing to him, that the river was taken possession of at the same time that Cumberland was occupied by the British forces; that it was equally in his possession with the soil adjacent on the ratification of the treaty, and would only be restored to the United States the moment he withdrew his forces from Dungeness; that consequently, under his own rule, the property and slaves on board those ships, originally taken at Cumberland, it was expected would partake of the quality of the property and slaves originally found on Cumberland and remaining there. To this, admiral Cockburn replied, that wherever the British flag was, there

was British territory. And by way of elucidating his position, demanded of Mr. Spalding, whether if he, admiral Cockburn, committed a murder on board of those ships in time of peace, he believed him amenable to the laws of the United States? No, sir, said he, I am amenable to my own government, and to my own sovereign. To this it was replied, he was amenable to his own government and to his own sovereign as an officer, but he was amenable to the laws of the United States as a man. And it was in turn asked, whether he believed, if a murder was committed on board an American ship in the river Thames, the laws of England would not operate upon the murder? No, sir. I too, sir, have studied the laws of England in my youth, and I think they would. Then, sir, we are at issue, and it is unnecessary to say more. If we are at issue, admiral Cockburn, upon an abstract principle, it is of little importance. Will you please to turn over to the first article of the treaty, and we will see if we can agree upon a practical result? This conversation is reported in its very words, that you may be possessed of the admiral's manner of reasoning and mode of thinking at our arrival: and it was closed by observing, that we should address a note to him, which we hoped he would answer as soon as possible; then took our leave. The next day, the 7th instant, we called upon him, and presented a transcript of the treaty, certified by us to be a true copy, which he accepted. We then handed him the following note, (No. 1.) which, after having read, he promised to answer the morning following. And here it is proper to observe, that at the meeting, and at the many that followed it, admiral Cockburn was calm, and his manner courteous in a high degree. During the evening of this day,

we understood that admiral sir Alexander Cochrane had arrived, and consequently, we should not receive any answer to our note until there had been a conference between admiral Cockburn and himself. At this delay we felt no regret, as we hoped from him, from many causes not necessary to state, a more liberal construction of the treaty. The weather was so bad, that it was the tenth, before this communication took place, immediately after which, admiral Cockburn transmitted to us the following note, in answer to the one we had addressed him. (No. 2.)

Finding this note was approved of in the margin by Sir Alexander Cochrane, and understanding—and even knowing from our own sight that he had taken his departure from the coast by the time we had received this note, all attempts at demonstrating the incorrectness of the conclusion drawn by admiral Cockburn from the first article of the treaty, seemed useless: for admiral Cockburn no longer had the power, (if he had the inclination,) to correct his first opinion; and we presently understood that even the small return of slaves and property embraced by his construction of the treaty, was yielded with some reluctance by Sir Alexander Cochrane. We, therefore, the same evening, addressed to admiral Cockburn, the note that follows. [No. 3.]

And in the conversation, which took place after the delivery of this note, it was agreed that orders would be given to restore to the owners, any slaves that were received in the British camp or ships, after the ratification of the treaty; and in consequence of this understanding, orders were given to restore some slaves so situated, by admiral Cockburn—but every means were used by the inferior officers to prevent the due execution of these or-

ders, particularly on board the *Regulus*, captain Robert Ramsay, as we were informed, and as captain Newell himself was witness to. It was at the same time indicated to us, the course which would be pursued with the slaves that had repaired to the British camp, or British ships, from Florida, namely: that they should be sent to Bermuda, and there confined in a ship until the decision of the British administration was taken on their case. We have deemed it proper to communicate this, as not unimportant to our own government, and our own citizens.

On the morning of the 11th an answer to our note was received, covering a list of seventy-seven negroes, a few bales of cotton, and a few horses and cattle, which were to be restored as having been originally taken at Cumberland-Island, and having remained there to the ratification of the treaty. [No. 4.]

In order to place the matter in a proper light, we the same day transmitted the following answer, which closed our joint correspondence with the admiral. [No. 5.]

And here it is necessary, for understanding the last clause of our letter, to state what led to it. Mr Spalding had suggested to admiral Cockburn, after every other means had failed, his giving permission to claimants to go on board his ships in the offing, to obtain the voluntary return of their slaves; this he assented to with great willingness. He sent an officer with them, and, in the presence of ourselves, gave the most positive instructions to the officer to have every facility afforded them. This produced a return of thirteen slaves; six of captain Wyllly's—five of Mr. Couper's—one of major Butler's—and one of major Johnston's; and would have produced the return of hundreds, if it

had not been for the means employed by the inferior officers to prevent their return. On the morning of the 13th instant, the British flag was struck at Dungeness, and having consulted with the many respectable gentlemen with us, as to the necessity of the occasion, we called upon captain Messias for an officer and twenty-five men to be sent to Dungeness to prevent, as far as possible, fugitive slaves still joining the British ships that were yet in the offing, and were to remain so for two or three days.

Mr. Spalding then addressed the following letter to admiral Cockburn, and followed captain Newell who had already taken his departure. [No. 6]

Having thus, Sir, closed the mission with which we were charged by general Pinckney and yourself, it is important in our opinion, that we should observe to you, that on our arrival at Dungeness on the 6th instant, the United States' Barge, taken at St. Marys, was at the wharf, but was removed that evening, and we also understood that most of the cannon taken at Point Petre, were removed subsequent to the ratification of the treaty, from Cumberland. Five or six hundred negroes, brought from St. Simons as late as the 15th February, were at Cumberland long after the ratification, and many of them sent off in the night of the day after our arrival.

In conversation with Mr. Spalding, it was admitted by admiral Cockburn, that major Kinsman of the marines, had continued to enter fugitive slaves into the Colonial and West-India Regiments, after notice of the ratification of the treaty, and until he, admiral Cockburn, had given written orders to the contrary.

Accompanying this letter, you will receive a list

of such slaves as their masters have returned to us. From Mr. Hamilton, who lost two hundred and twenty-odd, and from major Bulter* who lost one hundred and thirty, and from many others whom the terror of the times had driven away, we have no returns. Nor is it to be wondered at, that a thin population fled before a war, which has been conducted in the spirit which this has been since January last, for it carried insurrection as its means, and like the awful visitations of Providence, ruin has marked its course. But we state, sir, with pleasure, that the unhappy sufferers look with manly firmness to their own government for a reparation of their injuries, and to that government, we beg leave to consign them, with a firm persuasion, that they will not be disappointed in their expectations.

And we remain, Sir, respectfully

Your obedient servants,

(Signed)

THOMAS M. NEWELL,

Captain of Sea Fencibles.

(Signed)

THOMAS SPALDING.

* This list has since been received.

(No 1.)

(Copy.)

Cumberland-Island,
6th March.

SIR,

We are instructed by general Floyd to call upon you, and are by him authorized to receive from you, any public or private property, or any slaves, that are or were in your possession at the time of the ratification of the treaty of peace by the President of the United States. The construction put upon this article by us is, that all private property, and all slaves in your possession, whether on land or water, at the ratification of the treaty of peace, are to be restored. We place this construction upon the first article of the treaty, because it appears to have originated in the most amicable dispositions of both the American and British commissioners—amicable on the part of the American commissioners, in only demanding what might be restored without inconvenience—amicable on the part of the British commissioners, in promising to restore all that could be restored without great inconvenience—for we cannot persuade ourselves that the restoration of private property or slaves, is to be limited to the slaves or property taken in the forts or places you occupied; for it must be obvious to you, sir, and it must be obvious to all, that there are no slaves, and that there is but little private property, ever taken in forts. The limitations that appears to exist in the first part of the first article of the treaty, as to such property as may remain in the forts and places in your possession, is obviously confined to artillery and other public property taken in such forts or places, and which, if once re-

moved, would have required much trouble and much expense to restore; and this conclusion is the more obvious, from noticing that in the following part of the same article, archives, records, deeds, and papers which are objects of easy transport are promised to be restored, into whosoever hands they may have fallen, or wheresoever they may have been transferred.

Begging that we may have an answer upon this subject, so deeply interesting to the inhabitants of Georgia, as soon as possible,

We remain, sir,

Respectfully,

Your very obedient,

(Signed)

T. NEWELL,

T. SPALDING.

Admiral Cockburn.

(No. 2)

(Copy)

Head Quarters, Cumberland Island,
the 7th March, 1815.

Gentlemen,

I have had the honour to receive the document which you state yourselves authorized to assure me is a true copy of the treaty of peace that has been concluded between our respective governments, and which you have been instructed to lay before me by generals Pinkney and Floyd.

Accompanying this document I am likewise honoured with your note of this day, informing me of your being authorized to receive from me any public or private property, or slaves to be restored by me under the 1st article of the aforesaid treaty,

and explaining to me the construction you are pleased to put upon that article—But, I only find in the certified copy you have laid before me, that “all territory, places, or possessions taken during the war, or after the signing of the treaty, (excepting only as therein excepted) shall be restored without delay and without causing any destruction, or carrying away of the artillery or other public property, *originally captured in the said forts or places*, and which shall *remain therein* upon the exchange of the ratifications of this treaty; or any slaves or other private property.” It becomes therefore, alone necessary for me to state to you, that Cumberland Island being the only place or possession taken from America in this neighbourhood which was retained by me at the date of the ratification alluded to, I shall as quickly as possible evacuate it without causing any destruction, and I shall leave on it, or deliver to you, whatever public or private property or slaves (originally captured here) remained upon the island at the date of the ratification.

I have not the slightest reason nor inclination to doubt the amicable disposition you state to have actuated the British and American commissioners in forming this treaty. It appears however clear to me by the expressions they have thought proper to adopt in it, that I am only required or authorized to make the restitution I have above stated, and I must beg to decline venturing an opinion as to whether the treaty is properly worded according to the intentions of the commissioners, but I apprehend, had they wished to imply (as you conceive) “that all private property and slaves in my possession, *whether on land or water* were to be restored,” it might have been so specified without difficulty; and although you observe there are no

slaves, and but little private property ever taken in "forts," yet the continuation of the words "or places," may perhaps do away the difficulty which presented itself to you on that point. Therefore, gentlemen, in giving up *this place* in conformity with the treaty you have done me the honour to lay before me, I must beg to be excused from entering into discussion relative to captures made *elsewhere on land or water*, and which have been removed from the places where captured prior to the exchange of the ratifications of the treaty.

I have the honor to be,

With much consideration,

Gentlemen,

Your most obedient humble servant,

(Signed)

G. COCKBURN.

Rear-Admiral.

Approved,

A. COCHRANE.

*To capt. Newell, of the U. S. Sea Fencibles,
And Thomas Spalding, esq.*

Agents on the part of the United States, for receiving
property to be restored according to treaty, &c. &c. &c.

(No. 3.)

(Copy.)

Cumberland-Island,

March 10th, 1815.

Sir,

Your letter of the 7th is before us—and after the desire you have been pleased to express of declining all discussion of your construction of the first article of the treaty of peace between the United States and Great Britain, it only remains for us to call upon you for a list of the property, pub-

lic or private, and the slaves “originally captured on Cumberland-Island,” which you have declared your readiness to deliver. It is our duty to add this further and final remark—that this list will, we presume, include all slaves originally captured on the Island of Cumberland, whether such slaves may have been usually resident on that Island, or having come from other sections of the country, have there first fallen under the dominion of the British arms; and particularly, that it will include all slaves and other property taken or received since the ratification of the treaty of peace between our respective governments.

We remain, sir,

Respectfully,

Your very obedient, &c.

(Signed)

T. NEWELL,
T. SPALDING.

Admiral Cockburn.

(No 4.)

(Copy.)

Head Quarters,

Cumberland Island,

the 11th March, 1815.

GENTLEMEN,

I have the honour to acknowledge the receipt of your note of the 10th current, the first part of which obliges me to beg your reconsideration of my letter of the 7th, as I believe so far from declining therein “all discussion of my construction of the 1st article of the treaty of peace lately concluded between our governments,” I have there quoted, verbatim, the major part of it, and have

explicitly stated to you the line of conduct which *my construction* of the said article called upon me to adopt in giving up the territory possessed by the forces under my orders.

I declined only entering into discussion respecting "captures made *elsewhere*, and which had been *removed* from the places *where captured prior* to the exchange of the ratifications of the peace," such not appearing to me to come within the specified intention of the aforesaid 1st article of the treaty, and you will perceive, by his signature added to my letter, the commander-in-chief of his Britannic majesty's forces on the North American station concurs with me in this opinion.

I have herewith the honour to transmit, in compliance with your request, a list of property and slaves originally captured on Cumberland Island, and which appear to have remained on it at 11 P. M. of the 17th ultimo, the period at which the ratifications were exchanged.

I have the honour to be, gentlemen,

Your most obedient humble servant,

G. COCKBURN, Rear-Admiral.

To Capt. Newell and Thomas Spalding,

Agents for receiving restored territory and property, &c. &c.

(Copy.)

A list of slaves and property to be given up with Cumberland-Island, in conformity with the treaty lately concluded between Great Britain and the United States :

Jacob,
Jas. Nightingale,
Step,
Daniel,
John Miller,
Harriet,
Cinda,
Jenny,
Riva,
Stephen,
Peggy,
Joe,
Ellen,
Mobeta,
Leah,
Betty,
Stepney,
George,
Philly,
Toby,
Morris Sands,
Ned Simmonds,
Jockey,
Phoebe Sanders,
Celia,
Mila,
Kate,
Hannah,
Isaac,
Die,
Old Sarah,

Die,
Bob,
Jenny,
Lucy,
Maria,
Alfred,
Sarah,
Priscilla,
Scipio,
Bella,
Jemmy,
Jolly,
Morris,
Prime,
Tom,
Oscar,
Andrew,
Clarissa,
Mary,
Morris,
Frank,
Zak,
Hetty,
Bina,
Kitt,
Jacky,
Judy,
George,
Frank,
Lucy,
Moll,

Harry,	Alexander Delony,
Jack,	Jack,
Hesther,	Betty,
Sally,	Nanny,
Monday, alias Lorenzo,	Betty,
Smart,	Wm. Parling,
Jas. Herriott,	Sancho.
Parling,	

Twenty-two bales of cotton,
A number of horses and mules,
Some horned cattle.

G. COCKBURN,

Rear Admiral.

Head-Quarters, Cumberland-Island,
March 11th, 1815.

(No. 5.)

(Copy.)

Cumberland-Island,
March 11th, 1815.

SIR,

We have to acknowledge the receipt of your note of the 11th instant, containing a list of slaves, and other property, which had been originally found on Cumberland-Island, and which was remaining on the island at the ratification of the treaty of peace by the President. Against this construction of the first article of the treaty of peace, we must still protest, and we must still contend, sir, that all the property and all the slaves that were on Cumberland-Island, or in the rivers and waters adjacent to the same, at the ratification of the treaty, in the spirit of amity, in which that article was concluded, should have been re-

stored; and this construction of the first article of the treaty, was the more important to the people of the United States, as a great proportion of the property taken, and a great proportion of the slaves received, were sent from the waters of the United States, or from the Island of Cumberland, as late as between the period of the second and the fifth of March, and no inconsiderable number of slaves have been sent on board your shipping in the of-
fing, even since we have had the honour of addressing to you our first note, of the 7th instant. But, sir, to have pressed our construction of the treaty, after your letter had been approved of by the commander-in-chief, (sir Alexander Cochran,) and he had retired from the station, would have been something more than useless. We have then, sir, no alternative but to prefer this affair to our government. We cannot, however, conclude this correspondence, without acknowledging the pleasure we feel at the facilities which you have offered to all claimants of slaves to obtain their voluntary return—facilities which, we are sensible, would have been productive of more effect had more time been allowed to operate. And

We are, sir,

Very respectfully,

Your obedient servants,

(Signed)

T. NEWELL,

T. SPALDING.

Admiral Cockburn.

(No. 6.)

(Copy.)

Cumberland Island,
March 13, 1815.

SIR,

It is with much regret I have to state, that of the slaves which you have ordered to be restored, as having joined the British forces under your command, after the ratification of the treaty of peace by the President of the United States, several of them, now on board the *Regulus*, captain Ramsey, have not been delivered. These slaves are two of Mr. Armstrong's, January and Mary Stubs, one of the slaves of Mr. Miller, and the four of Mr. Copp, which were yesterday directed to be given up. I have to add that two of the three slaves delivered up to Mr. Armstrong, the very night they returned home, made their escape, and will, unquestionably, attempt to reach your ships; I must, therefore, request that any of the above persons that can be found, or any other slaves that may join your fleet, from the United States, before they quit this station, may be delivered over to captain Masias, at Point Petre, or to his officer at Dungeness.

And I am sir, respectfully,

Your very obedient servant,

(Signed)

T. SPALDING.

*Admiral Cockburn,
Albion.*

(D.)

Extract of a letter from Thomas Spalding, esq. to the Secretary of State, dated St. George's, (Bermuda,) May, 1815.

“ We sailed from Savannah on the 10th of May, and arrived on the 19th at Bermuda. While I was yet doubtful whether to apply to governor Cockburn of the Bermudas, as I soon understood there were but few American slaves remaining in his government, except what were in the naval arsenal at Ireland, and under the control of the naval commander, I received from admiral Griffith, through a lieutenant of the British navy, an intimation that he was desirous of seeing the agent, who was understood to have arrived from the United States, to make some demand of slaves and property. I waited, therefore, upon the admiral on the 20th instant, and found him very sick. I presented to him general Pinkney's authority, purporting to be derived from the President of the United States. He received me politely, appeared to me to be a mild and gentlemanly man; expressed much regret at the circumstance that led to the necessity of making this demand; but declared his inability to afford any relief; confirmed to me what I had before learned of most of the slaves having been sent to Halifax. He desired me, to-morrow, to address him in writing; that he would transmit my communication to his government, which was all that was in his power. Spoke something of giving me facilities on board of his ships to see and obtain the voluntary return of slaves. Finding that he was ill, and much ex-

hausted, I took my leave, and promised to address him a letter as soon as I could prepare one.

“Governor sir James Cockburn arrived at St. George’s on Saturday evening, and on Monday the 22d, at an early hour, I called upon him, still undetermined in my own mind whether to make my application to him on the subject of my mission or not, until I knew, at least, that there was something in his power to grant worth asking for. I, however, as I believed it to be my duty, in the event of having something to request, presented to him general Pinkney’s letter of authority. He instantly lost his temper—denied my authority contained in that letter—declared he would receive nothing from any one but the Secretary of State. After giving such explanations as I believed to comport with my duty, I found his irritations increased rather than diminished. He would not permit me to proceed to detail any of the reasons for my mission, though very ready, as he said he was bound in candour to do, to declare against the American interpretation of the first article of the treaty, and vehemently added, that he would rather Bermuda, and every man, woman, and child in it were sunk under the sea, than surrender one slave that had sought protection under the flag of England. I could add more in this spirit; but more is not necessary. I withdrew from the governor and transmitted my letter, which was then ready, to the admiral, and which is enclosed. (No. 1)

“I noticed the governor came down to the wharf within a few moments after my leaving him, and embarked in a boat. I was then apprehensive the admiral’s communications would change their complexion, and this I found to be too true, as the enclosed letter, (No. 2.) which I received late on Tuesday the 23d, will show.”

(No. 1.)

St. George's, (Bermuda,)

May 22d, 1815.

Sir,

I am appointed by the President of the United States the agent, and instructed by him to proceed in the first place to Bermuda, and from thence to any other of the colonies of his Britannic majesty, for the purpose of demanding the restoration of all public or private property—and particularly of all slaves which have been taken from the United States after the ratification of the treaty, in contravention, (as my government conceives,) of the first article.

It is not my desire, nor is it the desire of my government, to enter into any discussion on the justice or policy of taking private property, or of receiving slaves during the continuation of the war: but that war having terminated, happily for both nations, in peace—the object of that peace unquestionably is to heal the wounds that the hand of war has inflicted. To do this effectually, there must certainly be on both sides a liberal and enlightened construction of every article of the treaty; but above all, of that article in which individual as well as national right is concerned. I will now beg leave to invite your attention to the words of the first article of the treaty; which are—

“That all territory, places, and possessions, whatsoever, taken from either party during the war, or which may be taken after the signing of the treaty, excepting only the islands hereinafter mentioned, shall be restored without delay, and without causing any destruction or carrying away any of the artillery, or other public property, originally captured in the said forts or places, and

which shall remain therein upon the exchange of the ratifications of this treaty; or any slaves or other private property."

After a careful perusal of this article, it very naturally and forcibly occurs to the mind that this article contains two separate and distinct principles: a restoration of public property—a restitution of private property: that there is a manner of restitution liberal and enlightened—there is a manner of restitution illiberal and unfriendly, which the British commissioners, in the spirit of amity which dictated this article, were determined to guard against, by saying "that all territory, places, and possessions, taken during the war, should be restored without delay, and without causing any destruction, or carrying away any artillery or other public property, and which shall remain therein after the exchange of the ratification of this treaty." These conditions can, from their nature, have no relation to private property; they cannot be applied to it but by a strange perversion of language; and by being so applied the whole quality of the article becomes changed—and instead of being liberal and friendly, becomes limited, illiberal, and unfriendly.

The government of the United States were, therefore, greatly surprised to find that on a demand, at the Chesapeake, at Cumberland-Island, and in Louisiana, of public or private property, or slaves that were remaining within the limits of the United States, at the ratification of the treaty of peace, the commanding-officers every where adopted the extraordinary principle, that if either public or private property, or slaves, were removed a single mile from the place of capture, they were not restorable though still within the limits of the United States—though even under the eye of the

commissioners who were instructed at the several points to demand the restoration, and, in many instances, in the presence of the original proprietors, many days after the ratification of the treaty had been notified to the officers commanding. Public and private property, and slaves were shipped in a period of restored peace, in many instances to the ruin of the beholders, from the limits of the United States, because, as the commanding officers said, "the property, or slaves, were not taken at the particular point which the British forces occupied at the moment of the ratification of the treaty." So that all that was necessary to make the first article of the treaty, as far as regarded private property, or slaves, a complete nullity, as the British commanders were morally certain of receiving the earliest intimation of the contents of the treaty, they had only to draw in their out-posts, and to contract their limits to points where no property and few slaves had been taken. This was conspicuously the case in Georgia. Much property was taken at St. Mary's, and some negroes; at St. Simon's some cotton and other property, and many hundred slaves: from St. Simon's the British forces were withdrawn but four days before the ratification of the treaty, and two hundred British troops occupied St. Mary's for a day and night even after the ratification of the treaty. Yet, sir, because these two places had not remained in the uniform possession of the British forces to the very moment of the ratification, all the property and all the slaves taken at either and placed in deposite at Cumberland, were considered without the pale of its operation. Here, I flatter myself, I might rest with assurance of your according in the justice of the construction which the government of the United States has given to the first article of the treaty,

in expecting that all public or private property, or slaves, which had been taken or received by the British forces during the war, and which remained within the limits of the United States at the ratification of the treaty of peace, whether on the land or within the acknowledged waters, would be restored.

But, not to be wanting to myself, and not to be wanting to my government, I must reluctantly trespass upon your time while I enforce the distinction I drew in the first part of my letter, between public property to which the limitation in the first article of the treaty relates, and which enlarges and liberalizes its operation, and its application to slaves and private property, which would limit and make null its operations.

There may be, and often is, a strong motive for destroying public, when there can be none for destroying private, property. It frequently happens, in surrendering territory by a treaty of peace, that the party withdrawing, stipulates a right to destroy the fortifications in its possession, and to carry away or destroy the artillery and munitions of war in them ; but, it is believed, that no example can be found of a stipulation to authorize the destruction of private property of any kind, especially slaves. Equally strange would a stipulation be not to destroy them.

The terms of the article preserve this distinction between public and private property in a guarded manner. All territory, places, and possessions, with a particular exception, shall be restored without destroying or carrying away any of the artillery or other public property, originally captured in the said forts or places, and which remain there upon the exchange of ratifications. So far the stipulation acts upon proper subjects and

conforms to usage. Extend it to slaves and other private property, and how inconsistent and unnatural the application! Had it been intended to put slaves and other private property on the same ground with artillery and other public property, the terms "originally captured in the said forts or places, and which shall remain therein on the exchange of the ratifications of this treaty," would have followed at the end of the sentence, after "slaves and other private property." In that case both interests, the public and the private, would have been subject to the same restraint. But by separating them from each other, and putting the restrictive words immediately after "artillery and other public property," it shows that it was intended to confine their operation to those objects only, excluding from it "slaves and other private property."

I will now close my letter to you by stating, that at the ratification of the treaty of peace, on the 17th of February, forty thousand dollars worth of cotton, tobacco, rice, other produce, and other goods, were on Cumberland-Island, or in the ships, Countess Harcourt, and others, taken at St. Mary's and in its vicinity, and that those ships lay at that time in the Cumberland river, within a short distance of the shore: that the Countess Harcourt, and the ship Maria Teresa, had taken refuge in his catholic majesty's province of East-Florida; they depended upon the neutrality of their situation for protection, and made no resistance; that about seven hundred out of seven hundred and thirty negroes that joined the British forces from Georgia, were on Cumberland-Island, or in the ships so taken and then lying in Cumberland river. The first of these negroes, excepting a few that had departed in ships of war, left the United

States, in the Countess Harcourt, on the 19th of February ; that many hundreds of them left Cumberland-Island on the night of the 6th of March, and after I had had myself the honour of demanding them, on the part of the United States, from admiral Cockburn. I have not yet been furnished by my government with a list of slaves or private property, that was either at Tangier-Island or in Louisiana, liable to restitution under the first article ; but, from the public papers, we are assured of the fact, and a few days will put me in possession of the necessary evidence of the property and slaves so situated. The documents in support of the facts in relation to the property and slaves from Georgia, I shall be ready at any time to present to you.

And I beg you, sir, to believe, that if in any part of this letter I have used strong language, it is far from my intention to offend, for I feel fully assured my government rejoices at the restoration of the relations of peace, and fondly hopes that neither time nor circumstance will again alienate two nations that manners, and customs, and language, and mutual interest should unite.

And I am, respectfully,

Your very obedient servant,

(Signed)

THOS. SPALDING,

Agent United States.

Rear Admiral Griffith,

commanding his majesty's ships

and vessels on the North American station.

(No. 2.)

(Copy)

Admiral Griffith to Mr. Spalding.

His majesty's ship Bulwark,
Bermuda, 23d May, 1815.

SIR,

I have to acknowledge the receipt of your letter of the 22d instant, informing me that you are appointed by the President of the United States, the agent, and instructed by him to proceed, in the first place, to Bermuda, and from thence to any other of the colonies of his Britannic majesty, for the purpose of demanding the restoration of all public or private property, and particularly of all slaves which have been taken from the United States after the ratification of the treaty, in contravention (as your government conceives) of the first article.

Had I felt myself authorized or qualified to enter into a discussion of the several topics your letter embraces, it would in the first place have been my duty to call upon you to produce the authority under which you have come to these islands, on a mission of this public nature, for I presume, as you state your appointment to be by the *President* of the United States, that the letter you put into my hand when I had the pleasure of seeing you the day before yesterday, (and which, if I recollect right, was signed "Pinkney," whom you informed was a major general in the service of the United States,) is not the only authority you are in possession of. However, sir, it is quite unnecessary to take this preliminary step, for the subject of

your letter appearing to me more properly to belong to our respective governments to discuss than to the officers, military or naval, of either; the regular channel through which to make any applications of the nature of those alluded to in it, I should suppose would be the British minister, resident in the United States. Be this, however, as it may, I consider it entirely out of my province to enter into either negotiation or discussion with you on them, and the more so, from having learnt, since you called upon me, that the subject of your mission to these islands had been fully discussed between rear admiral Cockburn (before he left the coast of Florida) and commissioners appointed by the government of the United States; and that all persons then in possession of the British, who could possibly be considered as coming within the most liberal construction of the treaty, had been restored; and that the rear admiral's conduct and decisions had been fully approved by the late commander-in-chief, sir Alexander Cochrane, at Cumberland Island.

I shall not fail to transmit your letter to my government, and it might, at the same time, be satisfactory for a copy of the authority under which you have come to these islands to accompany it, should you think proper to furnish me with one.

I need scarcely observe that it will be loss of time your waiting here for the documents alluded to in the last paragraph but one of one your letter; or visiting any other British islands or settlements, for the purposes set forth in your said letter; for I can venture to assure you that there is not any authority at either competent to deliver up persons, who, during the late war, placed themselves

under the protection of the British flag; or property which may have been captured during the continuance of hostilities.

I am, sir, your most obedient servant,
(Signed) EDW. GRIFFITH,

Rear Admiral and Commander-in-chief

Thomas Spalding, esq.

(E.)

Extract of a letter from Mr. Adams to the Secretary of State, dated at London, June 23, 1815.

“I further observed, that the British admiral stationed in the Chesapeake had declined restoring slaves that he had taken, under a construction of the first article of the treaty, which the government of the United States considered erroneous, and which, I presumed, this government would likewise so consider; that a reference to the original draft of the British projet, and to an alteration proposed by us and assented to by the British plenipotentiaries, would immediately show the incorrectness of this construction. He said he thought it would be best to refer this matter to the gentlemen who were authorized to confer with us on the subject of a treaty of commerce. He asked me if Mr. Clay and Mr. Gallatin had communicated to me what had passed between them and this government on that head? I said they had. After inquiring whether I was joined in that commission, he said that the same persons had been appointed to treat with us who had concluded with us the treaty at Ghent, and that Mr. Robinson, the vice-president of the board of trade, had been added to them—they had already had some conferences with Messrs. Clay and Gallatin, and their powers were now made out and ready for them to proceed in the negotiation.”

Extract of a letter from Mr. Adams to the Secretary of State, dated at London, 15th August, 1815.

“ SIR,

“ The departure of Mr. Bagot having been some time delayed, and the private accounts from the United States received here indicating the actual continuance of Indian hostilities on the Mississippi and Missouri, I have thought it my duty, by an official communication to this government, to press for the surrender of Michilimackinac, and to apprise them that payment would be claimed for the value of the slaves carried away in contravention of the first article of the treaty of Ghent. I have the honour to enclose herewith a copy of my letter to lord Castlereagh on this occasion. I had mentioned to him the subject of the slaves in my first interview, and he had then expressed an intention to refer it to the commissioners with whom we were then negotiating the commercial convention; but they received no instructions relative to it, and considered their powers as limited to the objects upon which my colleagues were authorized conjointly with me to treat.”

Extract from Mr. Adams' letter to Lord Castlereagh, dated 9th of August, 1815.

My lord,

In two several conferences with your lordship, I have had the honour of mentioning the refusal of his majesty's naval commanders, who, at the restoration of peace between the United States and Great Britain, were stationed on the American coast, to restore the slaves taken by them

from their owners in the United States during the war, and then in their possession, notwithstanding the stipulation in the first article of the treaty of Ghent, that such slaves should not be carried away. Presuming that you are in possession of the correspondence, on this subject, which has passed between the Secretary of State of the United States and Mr. Baker, it will be unnecessary for me to repeat the demonstration, that the carrying away of these slaves is incompatible with the terms of the treaty. But as a reference to the documents of the negotiation at Ghent may serve to elucidate the intentions of the contracting parties, I am induced to present them to your consideration, in hopes that the minister of his majesty, now about to depart for the United States, may be authorized to direct the restitution of the slaves conformably to the treaty, or to provide for the payment of the value of those carried away contrary to that stipulation, which, in the event of their not being restored, I am instructed by my government to claim.

The first projet of the treaty of Ghent was offered by the American plenipotentiaries, and that *part* of the first article relating to slaves, was therein expressed in the following manner:

“All territory, places and possessions, without exception, taken by either party from the other during the war, or which may be taken after the signing of this treaty, shall be restored without delay, and without causing any destruction, or carrying away any artillery or other public property; or any slaves or other private property.”

This projet was returned by the British plenipotentiaries with the proposal of several alterations, and among the rest, in this part of the first

article, which they proposed should be so changed as to read thus :

“ All territory, places and possessions, without exception, belonging to either party, and taken by the other during the war, or which may be taken after the signing of this treaty, shall be restored without delay and without causing any destruction, or carrying away any of the artillery or other public property, or any slaves or other private property, originally captured in the said forts or places, and which shall remain therein upon the exchange of the ratifications of this treaty.”

It will be observed, that in this proposal. the words “ originally captured in the said forts or places, and which shall remain therein upon the ratifications of this treaty,” operated as a modification of the article as originally proposed in the American projet. Instead of stipulating that no property, public or private, artillery or slaves, should be carried away, they limited the prohibition of removal to all such property as had been originally captured in the forts and places, and should remain there at the exchange of the ratifications. They included within the limitation private as well as public property, and had the article been assented to in this form by the American plenipotentiaries, and ratified by their government, it would have warranted the construction which the British commanders have given to the article as it was ultimately agreed to, and which it cannot admit. For, by a reference to the protocol of conference held on the 1st of December, 1814, there will be found among the alterations to the amended projet, proposed by the American plenipotentiaries, the following :

“ Transpose alteration consisting of the words *originally captured in the said forts or places, and*

which shall remain therein upon the exchange of the ratifications of this treaty, after the words public property."

"Agreed to by the British plenipotentiaries."

It thus appears that the American plenipotentiaries admitted, with regard to artillery and public property, the limitation which was proposed by the British amended projet, but that they did not assent to it with regard to slaves and private property: that, on the contrary, they asked such a transposition of the words of limitation, as would leave them applicable only to artillery and public property, and would except slaves and private property from their operation altogether; that the British plenipotentiaries and government, by this proposed transposition of the words, had full notice of the views of the other contracting party, in adhering to the generality of the prohibition to carry away slaves and private property, while acquiescing in a limitation with respect to artillery and public property. With this notice, the British government agreed to the transposition of the words, and accordingly that part of the article as ratified by both governments now stands thus :

"All territory, places and possessions whatsoever, taken by either party from the other during the war, or which may be taken after the signing of this treaty, excepting only the islands hereinafter mentioned, shall be restored without delay, and without causing any destruction, or carrying away any of the artillery or other public property, originally captured in the said forts or places, and which shall remain therein upon the exchange of the ratifications of this treaty; or any slaves or other private property."

From this view of the stipulation, as originally proposed at the negotiation of Ghent—as subse-

quently, modified by the proposals of the respective plenipotentiaries, and as finally agreed to by both the contracting parties, I trust it will remain evident, that in evacuating all places within the jurisdiction of the United States, and in departing from their waters, the British commanders were bound not to carry away any slaves, or other private property of the citizens of the United States, which had been taken on their shores. Had the construction of the article itself been in any degree equivocal, this statement of the manner in which it was drawn up, would have sufficed to solve every doubt of its meaning. It would also show, that the British plenipotentiaries were not unaware of its purport as understood by those of the United States, and as I am instructed to urge its execution."

Extract of a letter from Mr. Adams to the Secretary of State, dated 22d August, 1815.

"Referring then to the contents of my letter of the 9th instant to lord Castlereagh, which he had seen. I told him (lord Liverpool) that having expected Mr. Bagot was on the eve of his departure, I had been anxious that he might go provided with instructions which might give satisfaction to the government of the United States, with regard to the execution of two very important stipulations in the treaty of Ghent. He said that as to the surrender of Michilimakinac, there could be no sort of difficulty. The orders for its evacuation had been long since given. It was merely the want of barracks for their troops that had occasioned a momentary delay, and he had no doubt the fort

had been before this delivered up. There never had been for a moment the intention, on the part of the British government, to retain any place which they had stipulated to restore. But with respect to the slaves, they certainly construed very differently from the American government the stipulations relating to them. They thought that it applied only to the slaves in the forts and places, which having been taken during the war, were to be restored at the peace. I said that independent of the construction of the sentence which so strongly marked the distinction between the artillery and public property, and slaves and private property, the process, by which the article had been drawn up, demonstrated, beyond all question, that a distinction between them was intended and understood by both parties. The first projet of the treaty had been presented by us. This had been required, and even insisted upon by the British plenipotentiaries. The article was, therefore, drawn up by us, and our intention certainly was to secure the restoration both of the public and private property, including slaves, which had been in any manner captured on shore during the war. The projet was returned to us with a limitation upon the restoration of property, whether public or private, to such as had been in the places when captured, and should remain there at the time of the evacuation. We assented to this so far as artillery and public property, which, by the usages of war, is liable to be taken and removed, but not with regard to private property and slaves, which we thought should, at all events, be restored, because they ought never to have been taken. We, therefore, proposed the transposition of the words, as stated in my letter to lord Castlereagh. The construction upon which the British commanders have carried away the

slaves would annul the whole effect of the transposition of the words. Artillery and public property had, of course, been found, and could, therefore, be restored almost or quite exclusively in the forts or places occupied by troops. But there was not perhaps, a slave to carry away in all those which were occupied by the British when the treaty was concluded; and to confine the stipulation relating to slaves within the same limits as those agreed to with regard to public property, would reduce them to a dead letter. He said that perhaps, the British plenipotentiaries had agreed to the transposition of the words there, at Ghent, without referring to the government here; and that although the intention of the parties might be developed by reference to the course of the negotiations, yet the ultimate construction must be upon the words of the treaty as they stood. He would see Mr. Goulburn, and inquire of him how they understood this transposition; but certainly for himself, (and he could speak for the whole government here,) he had considered them only as promising not to carry away slaves from the places which were occupied by their forces, and which they were to evacuate. There were, perhaps, few or no slaves in the places then occupied by them, but there was a probability at the time when the treaty was signed that New-Orleans, and other parts of the southern States, might be in their possession at the time of the exchange of the ratifications. If they had understood the words to imply that persons who, from whatever motive, had taken refuge under the protection of the British forces, should be delivered up to those who, to say the least, must feel unkindly towards them, and might treat them harshly, they should have objected to it. Something else, he could not say what,

would have been proposed. I said I had referred to the progress of the negotiation, and the protocol of conferences, only as confirming what I thought the evident purport of the words of the treaty. To speak in perfect candour, I would not undertake to say that the British plenipotentiaries had taken a view of the subject different from that of their government. But certainly we had drawn up the article without any anticipation that New-Orleans, or other southern ports, not then in their possession, would, at the ratification of the treaty, be occupied by them. Our intentions were to provide that no slaves should be carried away. We had no thought of disguising or concealing those intentions.

Had the British plenipotentiaries asked of us an explanation of our proposal to transpose the words we should certainly have given it; we evidently had an object in making the proposal, and we thought the words themselves fully disclosed it. Our object was the restoration of all property, including slaves which, by the usages of war among civilized nations, ought not to have been taken. All private property on shore was of that description; it was entitled, by the laws of war, to exemption from capture—slaves were private property. Lord Liverpool said that he thought they could not be considered precisely under the general denomination of private property; a table or a chair, for instance, might be taken and restored without changing its condition, but a living and human being was entitled to other considerations. I replied that the treaty had marked no such distinction; the words implicitly recognised slaves as private property—in the article alluded to “slaves or *other* private property.” Not that I meant to deny the principle assumed by him; most certainly a

living, sentient being, and still more a human being, was to be regarded in a different light from the inanimate matter of which other private property might consist. And if on the ground of that difference, the British plenipotentiaries had objected to restore the one while consenting to restore the other, we should readily have discussed the subject; we might have accepted or objected to the proposal they would have made. But what could that proposal have been? Upon what ground could Great Britain have refused to restore them? was it because they had been seduced away from their masters by the promises of British officers? But had they taken New-Orleans, or any other southern city, would not all the slaves in it have had as much claim to the benefit of such promises as the fugitives from their masters elsewhere? how then could the place, if it had been taken, have been evacuated according to the treaty, without carrying away any slaves, if the pledge of such promises was to protect them from being restored to their owners? It was true, proclamations inviting slaves to desert from their masters had been issued by British officers; we considered them as deviations from the usages of war; we believed that the British government itself would, when the hostile passions, arising from the state of war, should subside, consider them in the same light; that Great Britain would then be willing to restore the property or to indemnify the sufferers by its loss: if she felt bound to make good the promises of her officers to the slaves, she might still be willing to do an act of justice, by compensating the owners of the slaves for the property which had been irregularly taken from them. Without entering into a discussion which might have been at once unprofitable and irritating, she might consider this engagement only

as a promise to pay to the owners of the slaves the value of those of them which might be carried away. Lord Liverpool manifested no dissatisfaction at these remarks, nor did he attempt to justify the proclamation to which I particularly alluded."

Extract of a letter from Mr. Adams to Mr. Monroe, dated London, 5th September, 1815.

"In compliance with your instructions, I have this day addressed lord Castlereagh, claiming payment from the British government for the slaves carried away from Cumberland-Island and the adjoining waters, after the ratification of the treaty of peace, and in contravention to one of the express stipulations of that treaty.

"My preceding despatches, Nos. 9 and 10, will have informed you of the steps I had taken by an official letter to lord Castlereagh, and by a personal interview with the earl of Liverpool, in relation to this subject, previous to the receipt of your last instructions. The letter to lord Castlereagh has hitherto remained unanswered, and lord Liverpool made no attempt to answer either the reasoning of your letter on the subject to Mr. Baker, or the statement of the proof with regard to the meaning of the article, resulting from the manner in which it had been drawn up and agreed to. The substance of what he said was, that in agreeing to the article as it stands, they had not been aware that it would bind them to restore the slaves whom their officers had enticed away by promises of freedom.

"The case of these slaves, carried away from Cumberland, seems not even to admit of the dis-

tion to which Mr. Baker and lord Liverpool resorted; yet the prospect of obtaining either restoration or indemnity, appears to me not more favourable in this case than in many other of the same class. If there were any probability that this government would admit the principle of making indemnity, it would become necessary for me to remark, that the list of slaves transmitted to me, and of which I have sent to lord Castlereagh a copy, is not an authenticated document—it is, itself, merely a copy of a paper, under the simple signature of two persons, one of them an officer in the service of the United States, and the other, apparently, a private individual. It can scarcely be expected that the British government, or, indeed, any other, would grant a large sum of indemnities upon evidence of this description. Neither could I feel myself prepared to bargain for the value of these slaves, according to a general conjectural estimate of their value. I have made the offer under the full conviction that it will not be accepted. But if indemnity should ever be consented by this government to be made, the claims are of a nature to be settled only by a board of commissioners, authorized to scrutinize, in judicial forms, the evidence in support of them. I have also thought it would give a further sanction to the claim, to advance it while offering, still, to this government the alternative of restoring the slaves themselves.”

Mr. Adams to lord Castlereagh.

London, September 5, 1815.

My lord,

In the letter which I had the honour of addressing to your lordship, on the 9th of August last, I stated that I had been instructed by my government to claim the payment of the value of the slaves carried away from the United States by the British naval commanders stationed on the American coast, notwithstanding the express stipulation to the contrary in the first article of the treaty of Ghent, in the event that such slaves should not be restored to their owners.

The enclosed is a copy of a list of seven hundred and two slaves taken in the State of Georgia, by the forces under the command of rear admiral Cockburn, and carried away after the ratification of the treaty of peace from Cumberland-Island, or the waters adjacent to the same, which has been transmitted to me by the Secretary of State of the United States, with a new instruction to claim the indemnity, justly due to the owners, to the full value of each slave. Should his majesty's government now prefer to restore the slaves, who must yet be in their possession or that of their officers, it is presumed to be still practicable; but their removal having been in contravention of the express stipulation of the treaty, it is to the faith of Great Britain, pledged, by that stipulation, that the United States can alone recur for indemnification to the owners for the loss of their property, if the slaves are not restored.

If it should be deemed expedient rather to make this compensation than to restore the slaves to their owners, I am authorized to enter into such arrangements as may be thought proper for ascertaining the amount of the indemnity to be

made, and settling the manner in which it may be al owed.

I have the honour to be, with the highest consideration, your lordship's very humble and obedient servant,

(Signed) JOHN QUINCY ADAMS.

To the right honourable

lord viscount Castlereagh, &c. &c. &c.

*Extract of a letter from Mr. Adams to Mr. Monroe,
dated London, 26 September, 1815.*

“I have not yet received any answer to either of those which I addressed to lord Castlereagh, in relation to the slaves carried away in violation of the first article of the treaty of Ghent.”

Copy of a letter from Mr. Adams to lord Bathurst.

25 Charles street. Westminster.

October 7, 1815.

My lord,

The documents of which I have now the honour of enclosing to your lordship copies, have been transmitted to me from the government of the United States, with instructions to apply to that of his majesty for the restitution of the slaves referred to in them, or for indemnity to their proprietor, Raleigh W Downman, for the loss of them. In the cases which I have heretofore presented to the consideration of his majesty's government, and concerning which I am yet waiting for the honour of an answer, I have deemed it sufficient to state,

in support of the documents furnished, the simple fact of the taking and carrying away of the slaves, and the appeal to the plain and explicit stipulation in the treaty of Ghent, which has been thereby violated. But in addition to these grounds of claim, it cannot escape your lordship's discernment that in the present case there are circumstances which entitle it to peculiar regard, independent of the engagement in the treaty: These slaves having been taken and carried away by a British officer, while himself under the special and solemn protection of a flag of truce. The transaction, therefore, was in the nature of a breach of parole: marked not only with the exceptionable characters of depredation upon private property, but with the disregard of that sacred pledge of peace which is tacitly and universally understood to be given by the assumption of a flag of truce; to prescribe the restitution of property thus captured, no express stipulation could be necessary. Yet the stipulation of the treaty applies likewise to the present claim in all its force. I am induced to hope it will meet with the immediate attention of his majesty's government.

I am happy to avail myself of the occasion to renew to your lordship the assurance of my highest consideration.

(Signed) JOHN QUINCY ADAMS.

Copy of a note from lord Bathurst to Mr. Adams.

Foreign Office, October 9, 1815.

Earl Bathurst presents his compliments to Mr. Adams, and has the honour to inform him that his majesty's government will cause immediate inquiry

to be made into the case of the slaves carried away by the officer of the flag of truce, as represented in Mr Adams' note of the 7th instant.

Lord Bathurst requests Mr. Adams will accept the assurance of his high consideration.

Copy of a letter from Mr. Adams to the Secretary of State, dated October 31, 1815.

Sir,

I have the honour to enclose copies of two papers received from lord Bathurst, relative to the taking and carrying away of slaves from the United States by the British naval commanders, in violation of the first article of the treaty of Ghent, and also by an abuse of the privileges allowed to a flag of truce.

I have the honour to be, &c.

(Signed) JOHN QUINCY ADAMS.

Copy of a note from Lord Bathurst to Mr. Adams, dated October 24, 1815.

The undersigned, one of his majesty's principal Secretaries of State, has the honour to acknowledge the receipt of Mr. Adams's letter of the 7th instant, with the documents therein contained, relating to eleven slaves, the property of Raleigh W. Downman, an American, stated to have been received on board and carried off in a flag of truce sent by captain Barrie (when senior officer in the command of the British flotilla up the Rappa-

hanock) to procure the release of a surgeon's assistant who had been made prisoner.

The undersigned has the honour to acquaint Mr. Adams that captain Barrie having been referred to, without loss of time, for such particulars as he might be enabled to give upon this subject, a statement to the following effect has been received from that officer, which the undersigned hastens to communicate to Mr. Adams.

Captain Barrie has not any documents with him to which he can refer, but he feels confident that he may trust to his memory on this occasion.

The letters marked A and B. transmitted by Mr. Adams, captain Barrie believes to be copies of those which passed between the American commanding officer and himself.

He is certain that he never received the letter marked D, copy of which is transmitted in Mr. Adams's letter, and has no recollection of any slaves ever having been received on board any flag of truce during the time he was entrusted with the command of the Chesapeake squadron; if such a circumstance did occur it was without his knowledge or authority. Had such an event fallen under captain Barrie's cognizance he would (if the slaves had forcibly been taken from the shore) instantly have ordered them to be restored, and the officer so offending into confinement, till he could be brought to trial; if, however, the slaves had voluntarily sought British protection, and had once obtained a footing under the British colours, he should not have taken upon himself to allow them to be forced back into slavery, but should have waited the directions of the commander-in-chief. During the two winters that captain Barrie was employed as senior officer in the Chesapeake, the slaves were constantly escaping from

the shore and joining the British ships: on these occasions their general practice was to show something to represent the white flag, and captain Barrie thinks it not improbable (if any slaves were received on board the Franklin) that they may have escaped in the cance and have themselves hosited the flag which has been sworn to.

Before the surgeon's mate was restored, admiral Cockburn had arrived in the Chesapeake, and if the letter D had ever reached the admiral, captain Barrie is of opinion it certainly would have been communicated to him.

Captain Barrie states that the masters of the slaves very frequently came off to the ships to claim them; on which occasions he uniformly left it to the slaves whether they would remain under British protection or return to their masters, and even allowed the masters to converse with their slaves apart from the ship's company

The violation of a flag of truce was a very tender subject with captain Barrie at the period in question, for he had a short time previous been engaged in correspondence with the commanding officer of the United States forces at Norfolk, on want of respect paid to British flags of truce; one of his small four-oared boats, unarmed, with a large new white flag flying, having been wantonly fired on in open day, though the boat was proceeding to the place where the Americans had previously arranged that flags of truce should be received. One of captain Barrie's men was killed when the boat was receding from the shore with the flag of truce still flying. The boat was employed to land the servant of the Russian secretary of legation who was on board the Dragon waiting a passage to Europe. Captain Barrie remarks on Downman's memorial, that till after the peace a

squadron was constantly in the Chesapeake, and that though the Dragon had sailed, the letter D, if then in existence, could easily have been presented to the senior officers, either at Tangier Island or Symhan Bay. The Franklin, the vessel stated to have carried off the slaves, remained in the bay with the ship she was manned from, the Havanna.

The undersigned trusts that after a perusal of the above statement, on the part of captain Barrie, Mr. Adams will concur in the opinion that some mistake exists with respect to the conduct imputed to that officer. But the undersigned has the honour to acquaint Mr. Adams, that in order to ascertain, as well as possible, the real state of the transaction, a communication will be made forthwith to admiral Cockburn, for the purpose of obtaining further information upon the subject, with which he must have been acquainted, as it appears that he had arrived in the Chesapeake before the surgeon's mate was restored.

The undersigned requests Mr. Adams will accept the assurances of his highest consideration.

(Signed)

BATHURST.

Foreign Office,

October 24, 1815.

*Copy of a note from lord Bathurst to Mr. Adams,
dated October 25, 1815.*

The undersigned, one of his majesty's principal secretaries of state, has had the honour to receive Mr. Adams' letters of the 9th of August and 5th of September, last; the first of which, recites the

first article of the treaty of Ghent, and requires "that his majesty's naval commanders, who at the restoration of peace between the United States and Great Britain were stationed on the American coast, should restore the slaves taken by them, from their owners, in the United States, during the war, and then in their possession." This claim is set up in consequence of the following interpretation which is given to the first article of the said treaty by the government of the United States, in as far as it relates to slaves and private property, namely: "That in evacuating all places within the jurisdiction of the United States, and in departing from their waters, the British commanders were bound not to carry away any slaves, or other private property of the citizens of the United States, which had been taken upon their shores." And it takes its origin from a different construction, of the same article of the treaty, by his majesty's naval officers on the coast of America, who, (according to Mr. Monroe's letter to Mr. Baker, of the 1st of April.) contend that "slaves, and other private property, are comprised under the same regulation with artillery and other public property, and that none ought, in consequence, to be restored, except such as were, at the time of the exchange of the ratifications of the treaty, in the forts and places where they were originally taken."

The arguments brought forward by the American government, in support of their understanding of the first article of the treaty of Ghent, rest partly upon such collateral evidence as may be deduced from the intention of the negotiators, at the time they drew up that article. The undersigned need not remind Mr. Adams of the inconvenience which would result, were the parties upon whom treaties are binding to recur to the inten-

tions of the negotiators of such treaty, instead of taking as their guide the context of the treaty itself, on any point of controversy respecting it.

The undersigned is, however, willing to waive this objection. In this instance, it would appear that the alteration in the original article proposed by the British commissioners, was introduced by a verbal amendment suggested by the American plenipotentiaries. Many alterations of this kind took place, sometimes at the suggestion of one party and sometimes of the other, but it surely is not meant to be inferred from this that a change of phrase, professedly verbal, is to be taken as necessarily denoting or importing an admitted change of construction. It is certainly possible that one party may propose an alteration with a mental reservation of some construction of his own, and that he may assent to it, on a firm persuasion that the construction continues to be the same; and that therefore he may conciliate, and yet concede nothing by giving his assent. The proposed alteration was considered as merely verbal—no suspicion appears to have been entertained that it changed the stipulation as originally introduced: and it is not averred that the American plenipotentiaries then thought of the construction now set up by their government. The meaning of the British negotiators is admitted to have been made quite apparent by their project, and as nothing passed indicative of any objections to it on the part of the American commissioners, or of any departure from it by the British negotiators when the alterations was suggested by one party and acceded to by the other; and as there was no discussion on the propriety of making the restitution more extensive as to slaves, and other private property, than as to the other property mention-

ed, the undersigned cannot subscribe to the conclusions which Mr. Adams and his government have drawn from this manner of viewing the subject. The undersigned will now proceed to examine that part of the subject which regards the construction that has been given to the context of the article in question by the government of the United States.

By the first article of the treaty, it is stipulated that "there shall be a firm and universal peace between his Britannic majesty and the United States, and between their respective countries, territories, cities, towns, and people of every degree, without exception of places or persons. All hostilities both by sea and land shall cease as soon as this treaty shall have been ratified by both parties as hereinafter mentioned. All territory, places, and possessions whatsoever, taken by either party from the other during the war, or which may be taken after the signing of this treaty, excepting only the islands hereinafter mentioned, shall be restored without delay, and without causing any destruction or carrying away any of the artillery, or other public property originally captured in the said forts or places and which shall remain therein upon the exchange of the ratifications of this treaty; or any slaves or other private property. And all archives, records, deeds, and papers, either of a public nature or belonging to private persons, which in the course of the war may have fallen into the hands of the officers of either party shall be, as far as may be practicable, forthwith restored and delivered to the proper authorities and persons to whom they respectively belong. Such of the islands in the Bay of Passamaquoddy as are claimed by both parties, shall remain in the possession of the party in whose occupation they may be at the time

of the exchange of the ratifications of this treaty, until the decision respecting the title to the said islands shall have been made in conformity with the fourth article of this treaty.

“No disposition made by this treaty as to such possession of the islands and territories claimed by both parties shall, in any manner, whatsoever, be construed to affect the right of either.”

The main purport of the first article in the former part of it, relates to the general pacification, and in the latter part of it to some of the direct consequences on the territorial possessions of the two countries, and the property within such possessions. As to the public property in the posts or places to be restored, it provides that if it shall have the double condition annexed to it of having been originally captured therein, and of remaining therein when the ratifications are exchanged, then such property is to be restored, and it is not to be destroyed or carried away. It would surely have been unusual and unreasonable to have stipulated for the restitution of any property which never had belonged to the fort or place, or which had been already destroyed or carried away so as no longer in fairness, to have been considered as belonging, to it, for it would seem to have no connexion with the subject matter of that part of the article in which the stipulation concerning it must be supposed to occur. As to public property, it appears quite plain that the carrying away here spoken of, is *from* the fort or place to which it belonged, and from no other; for the condition which is admitted to apply to that would otherwise have no application at all: and no sound reason can be given why the condition might not, in both its branches, apply as well to private as to public property—provided the construction would fairly

admit of it. Both parties appear to agree as to the conditions which relate to public property. But then immediately follow, in the same sentence, the words "or any slaves or other private property." And here the question is whether slaves, and other private property, are to be restored under the same limitation provided in the same article, and in that part of it which immediately precedes the words in question; or whether they are to be restored under different provisions? In the first place the words do not admit of, nor is it contended by either party that there is, any distinction whatever made in this article between slaves and other private property; they are incontestably placed on the same footing, and whatever stipulations in this article apply to slaves as one description of private property, must of necessity apply equally to all other private property referred to in the article. The question then is, under what conditions is it stipulated that private property, (slaves inclusive.) is to be restored? If it be contended that by the position of the words in this article, private property is released from all the conditions under which it is admitted that public property is to be restored, the restitution becomes in that case unconditional. But Mr. Monroe does not contend for an unconditional restitution; and, therefore, seems to admit that the stipulation respecting private property is not a new and substantial stipulation, independent of preceding words, but that the words "carrying away," which, in the preceding part of the sentence, apply to the restitution of public property apply equally to the restitution of private property. But if the words "carrying away" apply to private as well as public property, how entirely arbitrary it is to say that the intervening words do apply to the one and do not ap-

ply to the other, although the words "carrying away" grammatically govern both?

Admitting, however, this arbitrary construction, still it would be more extensive than that for which Mr. Monroe contends. For in that case, there would be no limitation assigned as to the place where the private property was originally captured, nor any limitation as to the place from whence the private property was not to be carried away. All merchant vessels, therefore, captured on the high seas, and their effects, must, according to this construction, be restored, even if they should not be within the limits of the United States at the time of the exchange of the ratifications. Neither would there be any limitation as to the time subsequent to which the carrying away is not to take place. It might be from the commencement of the war—or from the signature of the treaty—or from the exchange of the ratifications: whereas, Mr. Monroe contends, that the places where they had been originally captured—the places from whence they must not be carried away—and the period to which this limitation applies, are well ascertained by the first article. According to the construction of this article, by the American government, the private property in contemplation is limited to such as had been originally captured within the territories of the United States; and such property, so captured, must not be carried away after the exchange of the ratifications, nor from any place within the limits of the United States, whether this private property be at that period in American ports, or British ships of war, or British vessels. But if the first article provide for all these stipulations, one of them placing private property on the same footing as that on which, by the same, public property is

placed, and the others establishing dissimilar conditions, it is impossible to look at those passages in this first article, which can alone be made to apply to such provisions, and not be at once satisfied that these limitations cannot be extracted, without such omissions and interpolations as the undersigned is persuaded that it is not the intention of the American government to maintain. As to the application of this article to private property on ship-board, neither does the first article itself, nor did any discussion respecting it, express or refer to any such restitution of property, remaining in British ships of war or British vessels. There are not only no words in the article which stipulate such a provision, but there is a provision in the second article, which stipulates the contrary. By the second, the conditions are stipulated on which vessels and their effects are to be restored—they are to be restored if the vessels be not captured until after a given time from the exchange of the ratifications. If the vessels were captured previous to the time limited, neither they nor their effects are to be restored, wherever such vessels with their effects may be, although they should be within the limits of the United States; yet according to the stipulations of the second article, which have a direct application to private property on ship-board, if they have been captured within a limited time, they may be carried away at any subsequent period without reference to the exchange of the ratifications. To Mr. Monroe's observation, that destruction, in the first article, cannot apply to slaves, it might be sufficient to answer, that the expression may certainly apply to other private property, and that the stipulations which apply to one must apply to the other; but the observation is, in truth, not material to the

question at issue, because the point in dispute is not with reference to private property destroyed, but to private property carried away; which words, it is admitted, do apply to slaves and other private property. The question, then, seems to be this: Is that construction the true one, which is the most simple and is grammatically correct, and was that which it is admitted one of the contracting parties intended, and against which the other did not at the time object? or is that construction to be adopted which was not at the time professed—which the words of the article do not express, and which is in contravention of the article which immediately follows it?

In this alternative, the undersigned has no hesitation in communicating to Mr. Adams, that the British government is under the necessity of adhering to the construction of the disputed point in the first article of the treaty of Ghent, as set forth in this note, much as it has to regret, that the construction should differ so widely from that of the government of the United States.

The undersigned requests Mr. Adams to accept the assurances of his high consideration.

(Signed)

BATHURST.

Foreign Office,

October, 25, 1815.

Extract of a letter from the Secretary of State to Mr. Adams, dated November 16, 1815.

“It cannot be doubted that the British government will make a just indemnity to the owners for the slaves who were carried from the United States by the British officers, in violation of the

treaty of peace. The construction of the article relating to this subject, given in my letter to Mr. Baker, and maintained with so much reason and force in your conference with lord Liverpool, is that alone which can be admitted here. The palpable violation of the treaty by the British officers, in carrying those persons off, after the peace was proclaimed, from the presence of their owners, excited a sensibility which need not be described. A vigorous effort of the government to obtain justice is claimed and expected by them. Lists of the slaves taken from Cumberland-Island and Tangiers, have already been forwarded, and lists of those taken from other parts will be forwarded when obtained."

Extract of a letter from the Secretary of State to Mr. Adams, dated November 20, 1815.

"It is not expected that the British government will pay for any slaves who were carried from the United States, in violation of the treaty, of which satisfactory proof is not adduced. The proof applicable to those who were taken from Cumberland and Tangier Islands, will, I presume, be placed on the strongest ground; and I have no doubt that proof equally strong may be obtained of the removal of many others, who were carried off after the peace, in British ships, from other quarters. It is important that the principle be first established, that the British government will pay for the slaves carried off in violation of the treaty. The manner of liquidating the claims is the next point to be arranged. The mode suggested by you, the appointment of a board of commissioners,

with full powers to investigate every case, is thought the most eligible, indeed the only one that could do justice to the parties. This board ought to consist of one or more commissioners, to be appointed in equal number by each government, and to hold its session in the United States."

Extract of a letter from Mr. Adams to the Secretary of State, dated at London the 8th of February, 1816.

"In adverting to the subject of the slaves, I reminded him, (lord Castlereagh,) that there were three distinct points relating to them which had been under discussion between the two governments. The first regarding the slaves carried away by the British commanders from the United States contrary, as the American government holds, to the express stipulation of the treaty of Ghent. After referring to the correspondence which has taken place on this topic at Washington, and here, I observed that the last note concerning it, which I had received from lord Bathurst, seemed to intimate that this government had taken its final determination on the matter; that I hoped it was not so—I hoped they would give it further consideration—it had been the cause of so much anxiety to my government—it was urged so constantly and so earnestly in my instructions. The language of the treaty appeared to us so clear and unequivocal—the violation of it, in carrying away the slaves, so manifest—and the losses of property occasioned to our citizens so considerable, and so serious, that I would not abandon the hope that further consideration would be given to it here, and ultimately

that satisfaction would be made to the United States on this cause of complaint. Lord Castle-reagh said that he had not seen the correspondence to which I referred, but that he would have it looked up, and examine it. There was, I told him, a special representation concerning eleven slaves taken from Mr. Downman by the violation of a flag of truce sent ashore by captain Barrie : I had also received from lord Bathurst an answer relative to this complaint, stating that it had been referred to captain Barrie for a report, and giving the substance of that which he had made. It did not disprove any of the facts alleged by Mr. Downman ; but I must remark that captain Barrie was himself the officer who had sent the flag of truce, and who was responsible for the violation of it—and that as a general principle it was scarcely to be expected that satisfaction for an injury could ever be obtained, if the report of the person upon whom it was charged should be received as a conclusive answer to the complaint. He said he supposed the complaint itself was only the allegation of an individual, and that naturally reference must be made to the officer complained of for his answer to the charge. I replied that the documents I had furnished copies of, in Mr. Downman's case, did not consist merely of his allegations ; there were affidavits of several other persons—taken indeed *ex parte* because they could not be taken otherwise—but they were full and strong to the points, both of the violation of the flag and of the carrying away of the slaves. He said he did not know how they could proceed otherwise, unless the affair were of sufficient importance for the appointment of commissioners by the two governments ; but he had not seen the papers, and would look into them."

*Extract of a letter from Mr. Adams to Mr. Monroe,
dated London, 17th February, 1816.*

“ The note respecting the slaves carried away is a reply to that which I received from earl Bathurst in October last, as an answer to your letter to Mr. Baker, and to my letters of the 9th August and 5th September last, to lord Castlereagh. A copy of lord Bathurst’s note was transmitted to you immediately after it was received. The determination to refuse all satisfaction for this glaring violation of the treaty appeared, by the note, to be so settled and peremptory that I thought it would be most prudent to allow some interval of time to elapse previous to exposing all the distortion of facts and perversion of argument with which it abounded. I found upon the conversation with lord Castlereagh that he had seen none of the papers which had passed on this question during his absence in France, and this circumstance has afforded a proper occasion for urging the discussion again.”

Mr. Adams to the right honourable lord viscount Castlereagh, his majesty’s principal secretary of state for the department of foreign affairs.

The undersigned, envoy extraordinary and minister plenipotentiary from the United States of America, requests the attention of lord Castlereagh to the letters which he had the honour of addressing to his lordship on the 9th of August and 5th of September last, in relation to the slaves belong-

ing to the citizens of the United States, carried away by the naval commanders of the British forces from places within the United States subsequently to the peace between the two countries, and in violation of the engagement in the first article of the treaty of Ghent.

In pressing this subject once more upon the consideration of his majesty's government, the undersigned deems it necessary to state the terms of the stipulation in the treaty, and the facts in breach of it, constituting the injury for which he is instructed to ask redress from the justice and good faith of the British government.

The stipulation of the treaty is as follows :

“ All territory, places, and possessions whatever, taken by either party from the other during the war, or which may be taken after the signing of this treaty, excepting only the islands hereinafter mentioned, shall be restored without delay, and without causing any destruction, or carrying away any of the artillery or other public property originally captured in the said forts or places, and which shall remain therein upon the exchange of the ratifications of this treaty ; or any slaves or other private property.”

The facts in violation of this stipulation are, that in evacuating sundry places within the United States, which had been taken by the British forces during the war, the British naval commanders did carry away great numbers of slaves belonging to citizens of the United States. In his letter of the 5th of September, the undersigned had the honour of enclosing a list of seven hundred and two slaves carried away, after the ratification of the treaty of peace, from Cumberland Island and the waters adjacent, in the State of Georgia, by the forces under the command of rear admiral Cockburn,

with the names of the slaves, and those of their owners, citizens of the United States. A number, perhaps, still greater was carried away from Tangier Island, in the State of Virginia, and from other places, lists of whom, and of their proprietors, the undersigned expects to be enabled, in like manner, to produce. The only foundation which these naval commanders have alleged for this procedure was a construction of the paragraph containing this stipulation, so contrary to its grammatical sense and obvious purport, that the undersigned is well assured if the same phrase had occurred in any municipal contract between individuals, no judicial tribunal in this kingdom would entertain, for a moment, a question upon it;—a construction under which the whole operation of the words “slaves or other private property,” was annihilated, by extending to them the limitation confined, by the words of the treaty, to artillery and public property.

In addition to the unequivocal import of the words, the undersigned, in his letter of the 9th of August, adduced the manner in which the article had been drawn up, discussed, and finally agreed upon at the negotiation of the treaty, to prove that the intention of the parties had been conformable to the plain letter of the article. It was intimated in the answer to his two letters, which he had the honour of receiving from earl Bathurst, that some inconvenience might result, if the parties upon whom treaties are binding were to recur to the intentions of the negotiators of such treaty, instead of taking, as their guide, the context of the treaty itself, on any point of controversy respecting it. In reply to which, the undersigned observes, that his letter did not recur to the intentions of the negotiators, but to the intentions of the parties to

the treaty, as manifested in the process of drawing up and agreeing to the article; and not even to them, instead of the context of the treaty itself, but to support and maintain the context of the treaty against what he deemed a misconstruction, equally at variance with the rules of grammar and the intentions of the parties.

It is observed, in lord Bathurst's answer, that in this instance, the article as it stands was agreed to, by a verbal amendment suggested by the American plenipotentiaries, to the original article proposed by the British commissioners. Far otherwise—the original article was proposed by the American, and not by the British, plenipotentiaries. The original article proposed, that in evacuating the places to be restored, no property, public or private, artillery or slaves, should be carried away. An alteration was proposed by the British plenipotentiaries, and its object was, to limit the property to be restored with the places, to such as had been originally captured in the places, and should be remaining there at the time of the exchange of the ratifications. The reason alleged for this alteration applied only to public property. It might be impracticable to restore property which, though originally captured in the places, might have been removed from it before the exchange of the ratifications.

But private property, not having been subject to legitimate capture with the places, was not liable to the reason of the limitation; to which the American plenipotentiaries, therefore, assented only so far as related to artillery and public property; they did not assent to it as related to slaves and other private property. It was not a mere verbal alteration which they proposed: they adhered, in relation to slaves and other private property, to

their original draft of the article, while they consented to the proposed alteration with regard to artillery and public property. To this qualified acceptance the British commissioners agreed; nor need the undersigned remind lord Castlereagh that the British plenipotentiaries did not sign the treaty of Ghent until this article, as finally agreed to, and every other important part of the treaty, had been submitted to the British government itself, and received their sanction and approbation.

If lord Bathurst had taken this, which is presented as the true view of the circumstances under which the article in question was drawn up and adopted, the undersigned is persuaded that he would have been spared the necessity of adverting to the following passage of his lordship's answer, in which the undersigned trusts that some error of a copyist has left its meaning imperfectly expressed:

“It is certainly possible that one party may propose an alteration, with a mental reservation of some construction of his own, and that he may assent to it on the firm persuasion that the construction continues to be the same—and that, therefore, he may conciliate and yet concede nothing by giving his assent.”

The only sense which the undersigned can discover in this sentence as it stands, is that a party may conciliate and yet concede nothing, by assenting to an alteration insidiously proposed by himself. Impossible as it is that such could have been lord Bathurst's real meaning, the undersigned is equally unwilling to believe that his lordship intended to insinuate that, in the case of the stipulation now in question, an alteration was, on the part of the United States, proposed with a mental reservation of a construction not then avowed, which

was assented to by Great Britain with a firm persuasion that under the alteration the construction would remain the same. The undersigned must be allowed to say that there was nothing in the transaction referred to which could justify such an insinuation; that the article, as originally drawn by the American plenipotentiaries and presented to the British government, was plain and clear; that it admitted of no other construction than that for which the American government now contends; that it avowedly and openly contained a stipulation that in the evacuation of all the territories, places, and possessions, to be restored, no slave should be carried away; that an alteration was proposed by the British plenipotentiaries, which was accepted only in part; that in this partial acceptance the British government acquiesced, the undersigned will certainly not say with a mental reservation to make up by a subsequent construction of their own, for the part to which the United States did not assent—but he does deem it his duty to say that when Great Britain proposed an alteration to that of the meaning of which there could be no doubt, and when the alteration was accepted conditionally and under a modification to which she agreed, she was bound to perceive that the modification, thus insisted upon by the other party, was not a mere verbal change in the phraseology of her proposal, but, so far as it extended, a substantial adherence to the original draft of the article.

It is further urged in lord Bathurst's answer, that the construction contended for by the American government is inconsistent with another article of the treaty, for that it would require the restoration of the merchant vessels, and their effects, captured on the high seas, even if they should not

be within the limits of the United States at the time of the exchange of the ratifications. The undersigned is not aware how such an inference can be drawn from any thing that has passed between the two governments on the subject. Merchant vessels and effects, captured on the high seas, are, by the laws of war between civilized nations, lawful prize, and by the capture become the property of the captors. It was never asserted by the American government that the stipulation in question could mean that in evacuating the places taken within the territorial jurisdiction of either party, the other should be precluded from carrying away his own property. But as, by the same usages of civilized nations, private property is not the subject of lawful capture in war upon the land, it is perfectly clear that in every stipulation private property shall be respected, or that upon the restoration of places taken during the war, it shall not be carried away, the meaning of the expressions is defined by the subject matter to which they relate, and extends only to the property of the party from whom the place was taken, or of persons under his allegiance. But in the present case it will not be pretended that the slaves whose removal is complained of as a breach of the compact, were the property either of his majesty, of the naval officers in his service who carried them away, or of any of his subjects. They were the property of citizens of the United States; precisely the species of property which it was expressly stipulated should not be carried away: And far from setting up now, as is suggested in lord Bathurst's note, a construction not thought of when the treaty was formed, the American government do but claim the performance of the stipulation in the only sense which could be

applied to it at that time. That the British government gave it then any other construction was not only never communicated to the government of the United States, but was impossible to be foreseen by them. When Great Britain had solemnly agreed, without hinting an objection, to the principle of restoring captured slaves, it could not be foreseen that the engagement would be narrowed down to nothing by a strained extension of them, of a condition limited, by the words of the treaty, to another species of property. It was impossible to anticipate a construction of an important stipulation which should annihilate its operation. It was impossible to anticipate that a stipulation not to carry away *any slaves*, would, by the British government, be considered as faithfully executed by British officers in carrying away all the slaves in their possession.

The undersigned concludes with the earnest hope, that his majesty's government, reviewing the subject in the spirit of candour and of justice, will accede to the proposal which he has been instructed to offer, and make provision to indemnify the owners of slaves which were carried away in contravention to the engagement of the treaty.

He is happy to avail himself of the occasion to renew to lord Castlereagh the assurance of his high consideration.

(Signed) JOHN QUINCY ADAMS.

13, *Craven-street*,

17th February, 1816.

*Extract of a letter from Mr. Adams to Mr. Monroe,
dated London, 13th March, 1816.*

“ I now enclose a copy of the note sent to lord Castlereagh, concerning the slaves taken from Mr. Downman, by the violation of a flag of truce sent by captain Barrie. You will have seen, by lord Bathurst’s note, a copy of which was transmitted to you immediately after it was received, that captain Barrie disclaims all knowledge of the fact that the slaves were taken. As it appears, by the documents, that one of the slaves escaped from Bermuda and returned to his master, it may probably be in Mr. Downman’s power to furnish many further particulars which may be of essential use in the prosecution of this inquiry : such as the name of the vessel to which they were first sent from the flag—how, and by what vessel, and when they were afterwards sent to Bermuda, and into whose charge they were delivered there—perhaps, even the name of the officer who bore the flag—and whether Jeffery, the surgeon’s mate, for whom the flag was sent, was on board the Franklin while the slaves were there—or whether they had already been sent on board another vessel before he embarked? Barrie’s statement, and lord Bathurst’s note, seem intended to cast doubts upon the very fact of the slaves having been taken.”

N. B. A copy of the above was sent to Mr. Downman, but no answer has been received.

(Copy.)

Mr. Adams, to the right honourable lord viscount Castlereagh, his majesty's principal secretary of state for the department of foreign affairs.

The undersigned, envoy extraordinary and minister plenipotentiary from the United States of America, has the honour of inviting the attention of lord Castlereagh to a letter which, on the 7th of October, last, the undersigned addressed to earl Bathurst, in relation to eleven slaves, the property of Raleigh W. Downman, a citizen of the United States, alleged to have been taken and carried away by the violation of a flag of truce, sent by captain Barrie, commander of his majesty's ship Dragon. With this letter were enclosed copies of Mr Downman's memorial to the President of the United States, representing the facts, and of several other documents to substantiate them; to all which, the undersigned now begs leave to refer lord Castlereagh.

The undersigned had the honour of receiving from lord Bathurst an answer to this letter, acquainting him that captain Barrie himself had been immediately referred to for such particulars as he might be enabled to give upon this subject, and communicating the substance of his report upon this reference.

There are many particulars, in this statement of captain Barrie, which, appearing to have no bearing upon the special object of inquiry, and tending rather to draw the attention from it to other points of discussion, might, with propriety, be left unnoticed, but for the insinuations that they convey. He remarks, for instance, that at the period in

question, the violation of a flag of truce was a very tender subject with him, and he refers to a previous correspondence in which he had been engaged with the commanding officer of the United States' forces at Norfolk, on want of respect paid to British flags of truce, upon occasion of one of his own having been fired upon. The undersigned might deem it sufficient to say, that this was not the subject upon which captain Barrie was called for information. As the captain does not recollect the violation by his own people of the flag sent by himself, he did not mean to allege it as a retaliation upon that of which another flag sent by him had been the sufferer. Yet he avows, that if slaves, fugitives from their masters, had been received on board a flag sent by himself, he would not have restored them to their owners without an express order from his commander in chief—a tenderness for a flag of truce, upon which the undersigned forbears to comment.

Of the particular incident asserted by captain Barrie, the undersigned has no cognizance; but so far as this part of that officer's narrative may be understood as intending an imputation upon American officers or the American government, of disrespect to the sacred character of a flag, the undersigned will only remind lord Castlereagh of the repeated offers made by the government of the United States during the war, and by the American plenipotentiaries at the negotiation of peace, to punish every infraction of the most liberal laws of war, on their part, and to indemnify, as far as possible, every sufferer under them. It was in the power of Great Britain to have accepted these offers, on the single condition of reciprocity. The correctness of two of the documents transmitted by the undersigned to lord Bathurst,

and marked A, and B, is admitted by captain Barrie. He declares that he never received the document marked D, a circumstance acknowledged in Mr. Downman's memorial, and accounted for by the statement, that before a vessel could be procured to bear the flag with this letter, the British vessels had left the Chesapeake.

With regard to the violation of the flag of truce, and the taking and carrying away of the slaves, captain Barrie states, in general terms, that he has no recollection of any slaves ever having been received on board *any* flag of truce, during the time he was entrusted with the command of the Chesapeake squadron, and that if such a circumstance did occur, it was without his knowledge or authority.

The fact of the violation of the flag, and of the taking and carrying away of the slaves, is testified in the papers transmitted to earl Bathurst, by the depositions, upon oath, of four witnesses, and his majesty's government did not consider the transaction as duly investigated, or that justice had been done to the complaining party, merely because captain Barrie had stated the fact not to be within his recollection or knowledge. It was mentioned in lord Bathurst's note, that a communication would forthwith be made to admiral Cockburn, for the purpose of obtaining further information upon the subject, with which, it is added, he must have been acquainted, as it appears that he had arrived in the Chesapeake before the surgeon's mate was restored.

The undersigned can urge no objection to any source of information to which his majesty's government may deem it expedient to resort, for ascertaining the facts to their own satisfaction. But he thinks it proper to suggest, that there are

other sources which might also tend to the elucidation of the facts. Perhaps captain Barrie could indicate the name of the officer by whom he sent the flag. Mr. Jeffery, the surgeon's mate, whose restoration was the object of the flag, and who actually returned with it, might give some light upon the subject. The captain and officers of the Havana, must be supposed to know something of the affair. But independently of the recollection of all officers, themselves so materially and so pointedly interested in the result of the inquiry, from the documents transmitted by the undersigned, it appears that one of the slaves *made his escape* from the island of Bermuda and returned to his master. Information respecting the others might, then, be easily obtained by the British government from Bermuda. That the slaves were taken, the undersigned believes cannot admit of a doubt. How they were disposed of, is a question interesting to the solicitude which his majesty's government have felt upon an allegation which has been considered as implicating the character of British officers. The violation of a flag constitutes, in this instance, an aggravation which seems to call, with peculiar energy, for a complete and unequivocal investigation. The undersigned is persuaded, that his majesty's government will feel it to be due to the complaint of the individual, to the honour of their officers, and to their own sense of justice.

He has the honour of renewing to lord Castle-reagh the assurance of his high consideration.

(Signed) JOHN QUINCY ADAMS.

13, Craven-street,

12th March, 1816.

Extract of a letter from Mr. Adams to the Secretary of State, dated at London the 30th March, 1816.

“I have the honour to enclose copies of a note which I have received from lord Castlereagh, with a report from sir George Cockburn to the secretary of the admiralty, Mr. Croker, concerning the taking and carrying away of Mr. Downman’s slaves. You will not fail to perceive that the admiral, like captain Barrie, disclaims all knowledge of the transactions whatever, and that the effort and tendency of both their letters is to excite doubts with regard to the truth of Mr. Downman’s statement in his memorial to the President. I have no doubt it will be easy, and beg leave to suggest it may be very important to Mr. Downman, to furnish additional evidence of the facts, and particulars which may lead to the disclosure how and why the transportation, in broad day, of eleven slaves, to the British squadron, and by them to Bermuda, could be effected without the knowledge of either of the British commanding officers.”

Foreign Office,
March 26, 1816.

The undersigned has had the honour of receiving Mr. Adams’s note of the 11th instant, respecting the slaves asserted by Mr. Downman to have been carried away from his estates by a flag of truce, contrary to the usages of war.

The undersigned has now the honour of transmitting to him a report which has been recently received from rear admiral sir George Cockburn,

and as soon as the further reports which the admiral has promised to make upon the arrival of captain Hamilton at the anchorage off St. Helena, shall be received, the undersigned will not fail to communicate it to Mr. Adams, being not less anxious than himself upon a case in which a flag of truce is stated to have been violated.

The undersigned begs to renew to Mr. Adams the assurance of his high consideration.

(Signed)

CASTLEREAGH.

John Quincy Adams, esq. &c. &c. &c.

Northumberland,

St. Helena Roads,

9th February, 1816.

SIR,

With reference to Mr. Barrie's letter, No. 15, of the 3d of November, and its enclosures respecting certain slaves stated to have been carried away from the American shore, within the Chesapeake, by a British flag of truce in the month of December, 1814, I lose no time in begging you to acquaint their lordships that I have no knowledge whatever of such transaction, nor is mention made of any such in my various documents of that period, though his majesty's ships then in the Chesapeake, and on the adjacent coasts, were all acting under my immediate orders, and, consequently, made all their reports to me.

Mr. Downman's memorial to Mr. Madison induces me, however, to mention to their lordships that from my first entering the Chesapeake, in March, 1813, until the conclusion of the war, the said inland navigation was never left without seve-

ral of his majesty's ships; and when I quitted it in December, 1814, with a part of the squadron, I left there three frigates and two sloops under the orders of captain Clavelle, of the Orlando, with whom communications from the land were held by means of flags of truce, from one extremity of its shores to the other, as will appear by two of the paragraphs extracted from letters I received about the same period from that officer, (herewith enclosed,) and the first paragraph will show (in reply to a part of colonel Chawning's letter, that it was not uncustomary to trust the tender in question (which was the one attached to and manned from the Havana) up the Rappahannock river with hostile views. After the proclamation which was issued on this subject, the slaves were constantly coming at all risks to our ships, tenders, and boats, &c. for protection, which occasioned our squadron to be visited by Americans under flags of truce, asking the restoration of these unhappy people under various pleas, and I cannot help thinking that if the transactions in question had *really* taken place, as set forth by Mr. Downman, it would have come before me either through captain Clavelle, or through some other channel, previous to quitting the station, as I continued not only upon the coast, but *actually on shore in America* until after the ratification of the treaty of peace, and was to the last in the habit of receiving letters on such subjects from all parts of the country, Washington not excepted.

The Havana being now upon this station, and it being possible that some of the officers and people who were in the tender may be still on board the frigate, I will, whenever she returns to this anchorage, cause captain Hamilton to make every inquiry and report to me thereupon, and I

shall not fail to transmit to their lordships by the earliest opportunity afterwards, at which time I will also return the several papers which have been transmitted to me referring thereto.

I have, &c.

GEO. COCKBURN.

Extract of a letter from John Quincy Adams, minister plenipotentiary of the United States at London, to the Secretary of State, dated at London, the 15th of April, 1816.

“Since this interview with Lord Castlereagh I have received from him a note respecting the slaves carried away from the United States after the ratification of the peace. A copy of it is enclosed; to reply to it at present would be to no purpose. I shall wait for your further instructions.”

Copy of a letter from lord Castlereagh to Mr. Adams, dated April 10th, 1816.

The undersigned has the honour to acknowledge the receipt of Mr. Adams' note of the 17th of February, claiming, on behalf of the United States, all such slaves belonging to their citizens as had been carried away by the naval commanders of the British forces, from places within the United States, subsequently to the peace between the two countries.

The grounds upon which his majesty's government felt themselves compelled to withhold their acquiescence in the claim of the United States, as

preferred in Mr Adams' former note of the 9th of August, have been already fully explained by lord Bathurst in his communication of the 2nd of October: It does not, therefore, appear to the undersigned to be requisite again to discuss at any length the construction of the first article of the treaty of Ghent. Agreeing entirely in the arguments urged by earl Bathurst on this subject, the undersigned can never admit that construction of the article to be the true one which would apply to the restoration of slaves a different rule from that applicable to private property; or which, admitting that the restoration of private property, slaves inclusive, is to be subjected to some limitations, applies to it a different degree of limitation from that conveyed in the words immediately preceding.

His majesty's government have always been ready to admit the most liberal construction of the article in question. They have never pretended to resist the claim of the United States to indemnification for slaves or private property belonging to their citizens, which can be proved to have been in places directed to be restored by the treaty of Ghent, at the date of the exchange of the ratifications and to have been afterwards removed. But they do and must ever deny that the United States can have any claim to property not actually in the places which, by the stipulations of the treaty, were to be restored at the time specified therein, because such a claim is utterly inconsistent with the provisions of the treaty, and is equally unsupported by any thing which passed in the discussion of that treaty, or even by the original projet of that treaty as offered by the American negotiators.

That projet, indeed, required that the places should be restored without carrying away any

private property. If it had been then intended to provide for the restoration of all private property originally captured in the places, instead of prohibiting its removal, the article would have positively enjoined the restoration. What had been previously removed could not become the subject of the prohibition, for not being in the place to be restored, it could not be carried away. Under this projet, therefore, a removal previous to the ratification of the treaty, was admitted to bar the claim of the United States, without reference either to the distance to which the property had been removed to, the actual state of the property, whether on ship board or on British territory, or to the length of time which had elapsed since its removal.

The undersigned, therefore, considers it impossible to maintain that the insertion of the words, "originally captured in the said places which shall remain therein upon the exchange of the ratifications of this treaty," (words which must be admitted, at least, of a restrictive nature,) can have given to the original proposition of the American plenipotentiaries a greater latitude than it originally possessed.

The undersigned trusts that the government of the United States will, upon these considerations, not be disposed further to urge the general claim to indemnification which was the subject of Mr. Adams' former notes. Animated with a sincere disposition to act towards all powers with the strictest justice and good faith, his majesty's government will be most happy to attend to any representation on the part of the United States which may have for its object the restoration or indemnification for the loss of property of her citizens actually removed from places within the territory of the

United States, subsequent to the ratification of the treaty of Ghent. But, at the same time, the undersigned cannot consider any property which had been, previous to the ratification of the treaty, removed on ship board, as property forming a subject of such representation.

The undersigned begs to renew to Mr. Adams the assurances of his high consideration.

(Signed)

CASTLEREAGH.

Extract of a letter from the Secretary of State to Mr. Adams, dated 21st May, 1816.

“Should the British government persevere in its construction of the first article of the late treaty of peace, respecting slaves carried off in violation, as we presume, of its obvious import, the President is willing to refer the question to the decision of some friendly power, which you will propose. A reference is suggested, by provisions in the treaty, applicable to anticipated differences in other instances; indeed, where such differences exist, no better mode can be adopted for settling them in a satisfactory manner. In this instance, the interest is too important to be neglected. It is impossible that the opinion of the British government can be more decided than that of the United States. There is no reason, therefore, why the United States should yield to the opinion of Great Britain, more than that Great Britain should yield to that of the United States.”

Extract of a letter from Mr. Adams to lord Castlereagh, dated 17th September, 1816.

“4th. Slaves, carried away from the United States by British officers after the peace.

“As the construction given by his majesty’s government to the first article in the treaty of Ghent, in reference to the slaves carried away from the United States, by British officers, after the ratification of the peace, is so directly at variance with the construction which the American government think alone applicable to it, the undersigned has been further instructed to propose, that this question should be submitted to the decision of some friendly sovereign. This reference is suggested by provisions in the treaty of Ghent itself, applicable to the contingency of differences in other instances; and it is conceived, that when such differences exist, no better mode can be adopted for settling them in a satisfactory manner.”

Viscount Castlereagh to Mr. Adams, dated September, 28, 1816.

SIR,

I very much regret that the absence from London, at this season of the year, of several of the prince regent’s ministers, will preclude me from returning as early an answer to your note, of the 17th, as I should wish, under the sense I entertain of the great importance of the several objects to which it invites the attention of this government.

I have myself obtained the permission of the prince regent to make a short excursion to Ireland,

on my private affairs ; but I shall certainly return to London by the middle of November, and shall lose no time as soon after that period as my colleagues shall be reassembled, to bring the various objects referred to in your note under their deliberation.

I request you will accept the assurance of the high consideration with which I have the honour to be, sir, your most obedient servant.

(Signed)

CASTLEREAGH.

John Quincy Adams, esq., &c. &c. &c.

